LIBRARY
SUPREME COURT, U.S.
No. 257

Office-Supreme Court, U.S.
FILED
JUN 15 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner*,

v.

ALICIA VARAS, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

JOHN G. LAYLIN
701 Union Trust Bldg.
Washington, D.C. 20005

OWEN B. RHOADS
Three Penn Center Plaza
Philadelphia, Penn. 19102
Attorneys for Petitioner

COVINGTON & BURLING
GEORGE V. ALLEN, JR.
B. SCOTT CUSTER, JR.

DECHERT, PRICE & RHOADS
ARTHUR W. LEIBOLD, JR.
Of Counsel

June 15, 1965

TABLE OF CONTENTS

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provision Involved	3
Statement	3
Reasons for Granting the Writ	8
Conclusion	22
Appendix	

CITATIONS

Cases:

Aetna Life Ins. Co. v. *Dunken*, 266 U.S. 389 ..... 9, 11
Allgeyer v. *Louisiana*, 165 U.S. 578 ..... 9, 12
The Alsop Claim (*United States* v. *Chile*), Submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911) 17
American Ry. Express Co. v. *Levee*, 263 U.S. 19 2
Banco Nacional de Cuba v. *Sabbatino*, 376 U.S. 398 20
Clay v. *Sun Ins. Office, Ltd.*, 363 U.S. 207 ..... 9, 13
Clay v. *Sun Ins. Office, Ltd.*, 377 U.S. 179 ..... 9, 13
Confederation Life Ass'n v. *Ugalde*, 164 So. 2d 1 (Fla. 1964), *cert. denied*, 379 U.S. 915 8
Crown Life Ins. Co. v. *Calvo*, 164 So. 2d 813 (Fla. 1964), *cert. denied*, 379 U.S. 915 8
Deutsche Bank Filiale Nurnberg v. *Humphrey*, 272 U.S. 517 ..... 9, 19
Dougherty v. *Equitable Life Assur. Soc'y and 25 Other Cases*, 266 N.Y. 71, 193 N.E. 897 (1934) 20
Hartford Accident & Indem. Co. v. *Delta & Pine Land Co.*, 292 U.S. 143 9
Hilton v. *Guyot*, 159 U.S. 113 14
Home Ins. Co. v. *Dick*, 281 U.S. 397 ..... 9, 10, 12
Illinois Central R. Co. (*United States* v. *Mexico*), United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926), [1926-1927] Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951) 14
Indiana ex rel. Anderson v. *Brand*, 303 U.S. 95 12

Page

International Shoe Co. v. *Washington*, 326 U.S. 310 .....9, 13
Lauritzen v. *Larsen*, 345 U.S. 571 .....9, 18, 19
Case of the S.S. "Lotus" (*France* v. *Turkey*), P.C.I.J., Ser. A., No. 10 (1927), 2 Hudson, World Court Reports 20 (1935) 17
McCulloch v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 19
McGee v. *International Life Ins. Co.*, 355 U.S. 220 9
New York Life Ins. Co. v. *Dodge*, 246 U.S. 357 9
New York Life Ins. Co. v. *Head*, 234 U.S. 149 9
Romero v. *International Terminal Operating Co.*, 358 U.S. 354 19
Cases of Serbian and Brazilian Loans, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340, 402 (1935) 14
Société Internationale v. *Rogers*, 357 U.S. 197 12
Sun Life Assur. Co. v. *Klawans*, 165 So. 2d 167 (Fla. 1964) .. 8
Watson v. *Employers Liab. Assur. Co.*, 348 U.S. 66 .....9, 13
Zimmermann v. *Sutherland*, 274 U.S. 253 .....9, 19

Constitutional and Statutory Provisions:

17 Pa. Stat. Ann. § 190 (1963 Supp.) 2
41 Stat. 1007, 46 U.S.C. § 688 18
U.S. Const., amend. XIV 3, 6, 9, 12, 14, 18
28 U.S.C. § 1257(3) 2

Miscellaneous:

Beckett, *What Is Private International Law?*, 7 Brit. Y.B. Int'l L. 73 (1926) 16
Brierly, *The Law of Nations* (4th ed. 1953) 16
Briggs, *The Law of Nations* (1952) 16
Currie, *The Constitution and the Choice of Law*, 26 U. Chi. L. Rev. 9 (1958) 13
5 Hackworth, *Digest of International Law* (1943) 16, 20
Katzenbach, *Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law*, 65 Yale L. J. 1087 (1956) 15
League of Nations Doc. No. 1929.V.10 16
League of Nations Doc. No. 1930.V.17 16
Leflar, *Constitutional Limits on Free Choice of Law*, 28 Law & Contemp. Prob. 706 (1963) 13
Restatement, The Foreign Relations Law of the United States § 174 (Prop. Off. Draft, 1962) 20
§ 19, comment d (Prop. Off. Draft, 1962) 15
Report on Revised Sections § 194 (formerly § 199), comment a (May 18, 1965) 14
Stevenson, *The Relationship of Private International Law to Public International Law*, 52 Col. L. Rev. 561 (1952) 14, 15

Supreme Court of the United States

OCTOBER TERM, 1965

No.

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner*,

v.

ALICIA VARAS, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Petitioner, The Crown Life Insurance Company, prays that a writ of certiorari issue to review the judgment of the Superior Court of Pennsylvania in the above-entitled case.

OPINIONS BELOW

The opinion of the Court of Common Pleas of Montgomery County, Pennsylvania, is not reported. That opinion appears in the Appendix hereto at page 1a. The opinion of the Superior Court of Pennsyl-

vania, which reversed the judgments of the Court of Common Pleas and which ordered entry of judgment against Petitioner, is reported at 204 Pa. Super. 176 and at 203 A.2d 505 and appears in the Appendix hereto at page 6a. Petition for allowance of an appeal was made to the Supreme Court of Pennsylvania and was dismissed without opinion by that court. The order is not reported but appears in the Appendix hereto at page 16a.

JURISDICTION

The judgments of the Superior Court of Pennsylvania were entered on September 17, 1964. A timely petition for the allowance of an appeal was dismissed by the Supreme Court of Pennsylvania on March 22, 1965.* The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

Whether, in a suit by a Cuban citizen residing outside Pennsylvania against a Canadian corporation with respect to a Cuban insurance policy, the Pennsylvania court by rejecting the defenses of the Canadian corporation under Cuban law and enlarging its obligations through application of Pennsylvania law and by compelling the corporation to make payments prohibited

---

* Appeal from the Superior Court of Pennsylvania to the Supreme Court of Pennsylvania is discretionary pursuant to 17 Pa. Stat. Ann. § 190 (1963 Supp.). Consequently this petition for a writ of certiorari seeks to have reviewed the decision of the Superior Court of Pennsylvania but the petition is filed within ninety days of the denial of discretionary review by the Pennsylvania Supreme Court. American Ry. Express Co. v. Levee, 263 U.S. 19, 20-21.

by Cuban law (1) deprived the Canadian corporation of property in violation of the Fourteenth Amendment and (2) involved the United States in a violation of international law.

CONSTITUTIONAL PROVISION INVOLVED

This case involves application of the Fourteenth Amendment in that part which provides:

> ". . . nor shall any state deprive any person of life, liberty, or property without due process of law. . . ."

STATEMENT

Petitioner is a Canadian corporation with its head office in Toronto and is engaged in the business of writing life insurance. Petitioner's operations are international in scope. To that end it maintains branch offices in various nations throughout the world including Cuba and the United States. (R. 212, 254.) The operations of Petitioner's Havana branch are presently subject to stringent regulation by Cuban authorities. (R. 261, 303-10.) While the issuance of new policies has been discontinued, the Havana branch continues to service outstanding Cuban policies with assets maintained in Cuba for that purpose. (R. 252-53.) These assets cannot be transferred by the company to make payments outside Cuba even on its Cuban policies. (R. 261.) Petitioner's Havana branch is subject to severe penalties ("intervention"—in effect, confiscation of its assets) if Petitioner makes payments on its Cuban policies outside of Cuba even with its resources outside of Cuba. (R. 495-98.)

Respondent is a citizen of Cuba, was born in Cuba and was until the latter part of 1960 a resident of Cuba. (R. 217.) On April 27, 1944, application was made to

Petitioner's Havana branch for the policy of life insurance upon which this suit is based. The application provided that "the policy hereby applied for shall not take effect until it has been delivered to me." (Ex. P-AA, R. 205, 502.) The policy was delivered to Respondent in Havana in July 1944 and thereupon became effective. (R. 559.) Both the policy and the application were written in the Spanish language. (R. 183.) All premiums were paid by Respondent in Cuba to Petitioner's Havana branch, the last premium payment made by Respondent having been made in 1960 while Respondent was still a resident of Cuba. (R. 151, 217.)

The policy provided for payment of premiums and benefits in United States dollars which at the time the policy was written and delivered were legal tender in Cuba. (R. 254, 256, 488.) Under Cuban Law No. 13, which became effective in 1951, the dollar ceased to be legal tender and all dollar obligations by operation of this law became peso obligations at one peso to the dollar.* The policy was thereafter treated by both parties as having been transformed into a peso policy and the insured made premium payments in pesos. (R. 267, 272, 286.)** Later, in 1959 and 1961, other

---

* Law No. 13 was enacted on December 23, 1948, during the presidency of Carlos Prio Socarras. Its legal tender provisions became effective July 1, 1951, by virtue of Decree No. 1384, enacted April 9, 1951. Decree No. 1384 stated that debtors "may settle" their obligations under contracts issued before July 1, 1951 "at par through the delivery of national currency in the same amounts as those previously expressed in United States dollars." (R. 478, 524-26, 587-89, Appx. 17a-23a.)

** At trial counsel for Respondent suggested that some premium payments after 1951 "might" have been made in dollars and exchanged by the company into pesos at the prevailing rate prior to entering a peso payment on the company's books. The witness replied that such an exchange was "most unlikely" but that "all things are possible." (R. 285-86.) After 1959 payment in dollars was unlawful. (R. 495-96, Appx. 23a discussed *infra*).

Cuban laws were enacted which positively prohibit Petitioner from making any payments under the policy outside Cuba or in any currency other than the Cuban peso.* Thus, in 1951 the parties were given the right, which they acknowledged in practice, to discharge their obligations under the policy in pesos. Since 1959 payment in Cuba and in pesos has been mandatory, and these latter Cuban laws, as already noted, carry severe penalties which are enforceable against Petitioner's assets and its employees in Cuba.

The policy specifically provides for payment of the cash surrender value but only "in the absence of any legal restrictions."** Petitioner has throughout been ready, willing and able to pay Respondent the cash surrender value of her policy in pesos in Cuba in accordance with Cuban law. (R. 168, Appx. 26a.)

In August of 1960 Respondent left Cuba and took up residence in Athens, Georgia. (R. 217-18.) After some preliminary correspondence from Georgia with Petitioner's Toronto office, Respondent in April of 1961 made formal demand through an attorney in Philadelphia on Petitioner's agent in Haverford, Pennsylvania, with a copy to Toronto, for payment of the cash surrender value of her policy in dollars in the United States (R. 165, 201, 211-12.)

---

* Cuban Law No. 568 of September 23, 1959, prohibited payments in dollars in Cuba and transfers of Cuban assets, including intangible assets, from Cuba. Cuban Law No. 930, enacted February 23, 1961, required that all obligations demandable in Cuba be liquidated only in Cuban currency in Cuba. (R. 447-51, 493-98, 587-89, Appx. 23a-26a.)

** In the original: "no habiendo ningunas restricciones legales ...." (Ex. P-5, R. 387-88.)

Petitioner's reply from Toronto, dated May 4, 1961, set forth fully in the Appendix hereto (Appx. 26a), reiterated Petitioner's position that the company was prohibited by Cuban law from making the payment sought. (R. 202, 214-16.) On June 21, 1961, Respondent brought this suit through her attorney in the Court of Common Pleas, Montgomery County, Pennsylvania, by serving a complaint upon Petitioner's agent in Haverford, Pennsylvania. (R. 150.)

The complaint was signed by Respondent in Clarke County, Georgia. (R. 158.) Respondent herself had never been in Pennsylvania until the occasion of her testimony at the trial of this suit. Respondent's testimony was that in August of 1961 she had moved from Georgia to Miami, Florida. (R. 218.)

Respondent's complaint sought the cash surrender value of the policy in dollars and in the alternative a "return" in dollars of all premium payments made by Respondent to Petitioner's Havana branch during the period 1944-1960, whether made in dollars or pesos. (R. 151.) After a jury trial the Court of Common Pleas directed a verdict against Respondent on the first claim, holding that the contract was made and was to be performed in Cuba, that it was governed by Cuban law, and that Cuban law prohibited any payment outside Cuba. The court, nevertheless, directed a verdict in favor of Respondent on her claim for return of premiums, applying Pennsylvania law and holding that under Pennsylvania law Respondent was entitled to restitutionary relief. (R. 624; see R. 149, Appx. 1a.) Petitioner strenuously argued that to apply Pennsylvania law to a transaction intimately connected with Cuba and having no relationship with Pennsylvania would violate Petitioner's rights under the Fourteenth

Amendment and would involve the United States in a violation of international law.*

Both parties appealed to the Pennsylvania Superior Court. Petitioner again argued that to apply Pennsylvania law would violate Petitioner's rights under the United States Constitution and involve this country in a violation of international law. (R. 20, 35-39.) The Superior Court reversed the trial court on both counts, holding that while the principal contractual obligation to pay death benefits may have been made and been performable in Cuba, as the lower court found, the promise to pay the cash surrender value of the policy was "a continuous, irrevocable, offer which can only materialize into a contract by its acceptance . . . ." (R. 141, Appx. 12a.) The court reasoned that Respondent's demand through her attorney in Pennsylvania was an acceptance giving rise to a new contractual obligation created in Pennsylvania and was therefore governed by Pennsylvania law. (R. 144, Appx. 14a.) On this basis the Superior Court ordered that judgment non obstante veredicto be entered for Respondent for the dollar cash surrender value of the policy and for Petitioner on the claim for return of premiums. (R. 1, 2, 145, Appx. 4a, 5a, 16a.)

Petitioner thereupon, in accordance with Pennsylvania practice, petitioned to the Supreme Court of Pennsylvania for the allowance of an appeal from the Superior Court, again raising the federal questions review of which is here sought. (R. 647, 651.) As stated above, the petition was dismissed on March 22, 1965. (R. 641, Appx. 16a.)

---

* R. 447-49; Petitioner's Brief in Support of Motion for Judgment N.O.V. or for a New Trial 10-15, 42.

REASONS FOR GRANTING THE WRIT

This is one of scores of suits brought by Cuban citizens in United States courts seeking payment in the United States, in United States dollars, of the cash surrender value of life insurance policies purchased in Cuba from United States and Canadian insurance companies. It is the first such suit in which a United States forum has applied local law in the absence of a policy provision expressly providing for payment in a particular jurisdiction of the United States.*

In reaching this result in a case where there is no significant contact between the underlying transaction and the forum state, and in which both parties are citizens of foreign nations, the Pennsylvania courts have ignored controlling decisions of this Court and have embarked upon an unwarranted and intrusive interference in an international transaction between two foreign nationals, in which neither the United States nor the Commonwealth of Pennsylvania has a legitimate interest. Unless corrected by this Court, the decision below will cast doubt upon a constitutional rule that has hitherto been regarded as settled and will

---

* This case is indistinguishable on its facts from Crown Life Ins. Co. v. Calvo, 164 So. 2d 813 (Fla. 1964), *cert. denied*, 379 U.S. 915. There the Florida Supreme Court held, as Petitioner here maintains, that the contract of insurance, having significant contacts only with Cuba, was governed by Cuban law, that Petitioner's obligation by operation of that law had become one to pay pesos in Cuba and that since Petitioner was ready, willing and able in that case, as it is in this, to make payment in accordance with that law, there was no breach of contract. Similar results were reached in two companion cases, Confederation Life Ass'n v. Ugalde, 164 So. 2d 1 (Fla. 1964), *cert. denied*, 379 U.S. 915, and Sun Life Assur. Co. v. Klawans, 165 So. 2d 167 (Fla. 1964).

involve the United States in a violation of international law.

1. *The Application of Pennsylvania Law by the Courts Below, to Create Rights and Impose Obligations Where None Exist Under Cuban Law, and to Compel Petitioner to Make a Payment Which It Is Prohibited from Making by Cuban Law, Violates the Fourteenth Amendment.*

In an unbroken line of decisions this Court has recognized the rule that the Fourteenth Amendment forbids a court of the United States from applying the substantive law of the forum to a controversy with which the forum has no substantial connection, and in the resolution of which it has no legitimate interest. *Clay* v. *Sun Ins. Office, Ltd.*, 377 U.S. 179, 181-82; *Clay* v. *Sun Ins. Office, Ltd.*, 363 U.S. 207, 210-11; *Watson* v. *Employers Liab. Assur. Corp.*, 348 U.S. 66, 70-73; *Lauritzen* v. *Larsen*, 345 U.S. 571, 590-91; *Hartford Accident & Indem. Co.* v. *Delta & Pine Land Co.*, 292 U.S. 143; *Home Ins. Co.* v. *Dick*, 281 U.S. 397; *Aetna Life Ins. Co.* v. *Dunken*, 266 U.S. 389, 399-400; *New York Life Ins. Co.* v. *Dodge*, 246 U.S. 357; *New York Life Ins. Co.* v. *Head*, 234 U.S. 149; *Allgeyer* v. *Louisiana*, 165 U.S. 578; *cf. McGee* v. *International Life Ins. Co.*, 355 U.S. 220; *International Shoe Co.* v. *Washington*, 326 U.S. 310. See also *Zimmermann* v. *Sutherland*, 274 U.S. 253, 255-56; *Deutsche Bank Filiale Nurnberg* v. *Humphrey*, 272 U.S. 517, 519.* The decision below wholly ignores this settled rule—and in a context moreover where compli-

* Considerations in favor of permitting application of procedural or purely remedial rules of the forum are of course inapplicable here. The only issues at bar are the substantive rights and obligations of the parties.

ance with the obligation imposed by application of Pennsylvania law is affirmatively forbidden by the law of the jurisdiction that has the only substantial connections with the underlying transaction. The law of Cuba, far from requiring performance of the obligation created by imposition of Pennsylvania law, forbids Petitioner under severe penalties from discharging the obligation created by the decisions below.**

The sole contacts between the forum state, Pennsylvania, and the insurance transaction upon which this suit is based, are (1) that Respondent instituted suit in Pennsylvania, having shortly prior to suit made a demand for payment through her Pennsylvania attorney and (2) that Petitioner is licensed to write insurance in Pennsylvania which is wholly unrelated to the insurance it writes in Cuba. The second of these "contacts" cannot be sufficient to permit the forum state to impose its own legal standards upon the Cuban insurance transaction at issue, since such a rule would mean that jurisdiction over the person of a defendant is sufficient to obviate the due process requirement in choice of law—a rule rejected in each of the decisions of this Court cited above. By the same token, the first of the "contacts" with Pennsylvania cannot be permitted to supply the constitutional nexus, since contacts connected simply with the institution of litigation are present in every suit. The application of Pennsylvania law on the basis of these two "contacts" with that state would simply obliterate the due process line consistently drawn in the decisions of this Court.

In *Home Ins. Co.* v. *Dick, supra,* the Texas courts applied a Texas statute which permitted suit on an in-

** As pointed out above, Cuba retains jurisdiction over Petitioner by reason of the fact that Petitioner has employees and assets located there.

surance contract for a period longer than that specified in a policy provision enforceable under the law of Mexico where the contract was made. This Court declared:

> "All acts relating to the making of the policy were done in Mexico. All in relation to the making of the contracts of re-insurance were done there or in New York. And, likewise, all things in regard to performance were to be done outside of Texas. Neither the Texas laws nor the Texas courts were invoked for any purpose, except by Dick in the bringing of this suit. The fact that Dick's permanent residence was in Texas is without significance. At all times here material, he was physically present and acting in Mexico. Texas was, therefore, without power to affect the terms of contracts so made. Its attempt to impose a greater obligation than that agreed upon and to seize property in payment of the imposed obligation violates the guaranty against deprivation of property without due process of law." *Id.* at 408.

The rationalization by which the Pennsylvania courts have sought to avoid the constitutional requirement does not constitute an adequate state ground of decision. In *Aetna Life Ins. Co.* v. *Dunken, supra,* the Texas courts had sought in similar fashion to predicate the application of Texas law upon a purported finding that a "second contract" of insurance had been created in Texas. In that case the original policy had been issued to the insured in Tennessee. Later the insured became a resident of Texas where he exercised an option to convert the policy from one of term insurance into a twenty-year life policy. This Court squarely held that the application of Texas law by the Texas courts to increase the defendant's contractual obligation violated the defendant's rights under the full

faith and credit clause and the Fourteenth Amendment; the opinion states:

> "The second policy . . . was issued not as a result of any new negotiation or agreement but in discharge of preexisting obligations. It merely fulfilled promises then outstanding; and did not arise from new or additional promises. The result in legal contemplation was not a novation but the consummation of an alternative specifically accorded by, and enforceable in virtue of, the original contract. . . .
>
> "From these premises it necessarily results that the second policy follows the status of the first for which it was exchanged, and is controlled by Tennessee law." *Id.* at 399-400.

The constitutional question for decision is whether the minimum contact required under the due process clause is in fact present. If it is not, the constitutional rule may not be evaded by doctrinal ingenuity or confusion. And see *Home Ins. Co.* v. *Dick, supra* at 406-07; *Allgeyer* v. *Louisiana, supra* at 588-89; *cf. Indiana ex rel. Anderson* v. *Brand,* 303 U.S. 95, 100.

The decision below is particularly repugnant to the command of the Fourteenth Amendment in that it not only applies local law to alter and enlarge obligations pertaining to a transaction with which the forum has no significant contact but seeks affirmatively to compel Petitioner to violate the law of Cuba—the only jurisdiction with which the transaction has significant contacts. Even where the forum has predominant interests in the matter being litigated this Court has recognized the constitutional problem that is presented by an order requiring a party to violate foreign law. *Société Internationale* v. *Rogers,* 357 U.S. 197, 210-12.

The Pennsylvania courts have not attempted to justify the application of Pennsylvania law in terms

of the protection or furtherance of special interests or policies important to that state and no such justification can be found. Nor can the application of Pennsylvania law in this case be justified upon any special considerations of fairness to the parties, or of convenience, or of practicality. Compare *Clay* v. *Sun Ins. Office, Ltd.*, both *supra; Watson* v. *Employers Liab. Assur. Corp., supra; International Shoe Co.* v. *Washington, supra.* The decision below represents a total rejection of any constitutional limitation whatsoever upon a forum's choice of law and cannot be squared under any conceivable analysis with the constitutional rule applied in numerous decisions of this Court. See generally Currie, *The Constitution and the Choice of Law,* 26 U. Chi. L. Rev. 9 (1958); Leflar, *Constitutional Limits on Free Choice of Law,* 28 Law & Contemp. Prob. 706, 724-26 (1963).

A company such as Petitioner writing insurance in various foreign countries must maintain foreign currency reserves roughly proportional to its foreign currency obligations. The record shows that Petitioner in fact maintains peso reserves in Cuba with which to discharge its peso obligations. (R. 252, 253.) Both parties have suffered from a general depreciation of the Cuban peso and from the imposition of exchange control measures now in force in Cuba.* To permit

---

* It is no answer to say that the company could lawfully have withdrawn most of its peso reserves from Cuba prior to 1959. The Respondent also could have liquidated her policy and withdrawn the proceeds prior to 1959. Petitioner, conducting an international operation, must maintain reserves in the various countries where it has obligations precisely so that it can be sure of available reserves despite national legislation restricting the movement of funds from one country to another. Both parties might have anticipated and avoided the impact of Cuban restrictions on capital movements and the depreciation of Cuban currency, but they did not.

the creditor in such a transaction to avoid altogether the effect of governing Cuban law simply by bringing suit in another country cannot be justified upon any considerations of convenience, or fairness, or practicality, particularly where under the laws of Cuba payment outside of Cuba is not only a criminal offense but is undoubtedly no discharge of the obligation. The effect of the decision of the Pennsylvania court is to hold international insurance companies such as Petitioner liable for risks not contemplated in the contract and to introduce staggering uncertainties into the overall management of such a company's affairs.

2. *The Decision of the Court Below Involves the United States in a Violation of International Law.*

Where a case "involves a foreign element such as a foreign place of making of a contract but the parties are nationals of the forum, it is a private international law case. . . . The situation differs sharply when a national of a State other than the forum is a party to a private international law case; public international law then governs the content of all the private international norms applied."* Local conflict of laws rules

---

* Stevenson, *The Relationship of Private International Law to Public International Law*, 52 Col. L. Rev. 561, 576-77 (1952). *Cf.* Cases of Serbian and Brazilian Loans, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340, 402 (1935); Illinois Central R. Co. (United States v. Mexico), United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926), [1926-1927] Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951); Hilton v. Guyot, 159 U.S. 113, 163; Restatement, The Foreign Relations Law of The United States, Report on Revised Sections § 194 (formerly § 199), comment a (May 18, 1965), approved by the Institute at its meeting on May 20, 1965.

must yield to public international concepts of due process no less than to federal constitutional concepts.* International law is violated when a court under the guise of applying a local conflict of laws rule undertakes to alter rights and obligations of a national of a foreign state arising out of a transaction having no substantial contact with the forum state.** When, as here, the foreign national is injured by this process, "the court commits an international delict and subjects the State to diplomatic representations or the possible award of damages or other reparation by an international tribunal."***

---

* "'Due process,' substantive and procedural, has its international equivalent in that loose collection of fundamental notions of decency or natural justice, violation of which is claimed to be a 'denial of justice.'" Katzenbach, *Conflicts on an Unruly Horse: Reciprocal Claims and Tolerances in Interstate and International Law*, 65 Yale L. J. 1087, 1111 (1956). "It is not possible to state with any precision the exact extent of this limitation on the norms of private international law applied. In general it is one of reasonableness, comparable to that imposed by the Federal Constitution upon the conflict of laws rules of the states." Stevenson, *supra* at 579.

** "[A] state cannot obtain control over conduct not within its jurisdiction to prescribe by the simple device of inventing a choice of law rule to be applied in the particular case for the purpose of giving effect to a rule of its own law designed to govern conduct." Restatement, The Foreign Relations Law of the United States § 19, comment d (Prop. Off. Draft, 1962).

*** Stevenson, *supra* at 574 citing Beckett, *What is Private International Law?*, 7 Brit. Y. B. Int'l L. 73, 75 (1926).

The United States Department of State declared to the Preparatory Committee for the 1930 Hague Conference on the Codification of International Law:

> "Since national courts are not the final interpreter of international law and treaty rights, it follows that international responsibility may be based upon a failure of national courts

A Canadian national has entered into a contractual relationship in Cuba with a citizen of Cuba. The contract, written in Spanish, called for payment in a currency which at the time was legal tender in Cuba. When by operation of Cuban law the peso became the only legal tender, both parties acquiesced, recognizing that their rights and obligations were controlled by Cuban law. By no accepted international law norm may these rights and obligations be fundamentally altered by application of Pennsylvania law. To deprive a Canadian national of its defenses under the law of the only jurisdiction having any significant contact with the contract constitutes an unwarranted interference in a transaction in which the United States has no legitimate interest. The judgments of the Pennsylvania courts are manifestly unjust and constitute an unreasonable exercise of jurisdiction which, unless corrected by this Court, will properly give rise to a claim by

---

properly to interpret international obligations." League of Nations Doc. No. 1929.V. 10 at 10-11.

The Third Committee of the Hague Codification Conference subsequently adopted an article on state responsibility in accord with the foregoing:

> "International responsibility is incurred by a State if damage is sustained by a foreigner as a result of the fact:
>
> (1) That a judicial decision, which is not subject to appeal, is clearly incompatible with the international obligations of the State; . . .." Hague Codification Conference of 1930, Minutes of the Third Committee, League of Nations Doc. No. 1930.V. 17 at 237.

These views of state responsibility also find support in numerous decisions of international tribunals and in writings of publicists. See 5 Hackworth, *Digest of International Law* 526 *et seq.* (1943) and cases there cited; Briggs, *The Law of Nations* 678 (1952); Brierly, *The Law of Nations* 215 (4th ed. 1953).

the Government of Canada on behalf of its national under principles of international law.

The United States Government has espoused a similar claim on behalf of a United States citizen. In *The Alsop Claim* (*United States* v. *Chile*), Submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911), the United States contended that the application of Chilean law by a Chilean court, in a suit brought by a United States citizen asserting rights under an allegedly Bolivian contract, wrongfully deprived the United States citizen of contractual interests possessed under controlling Bolivian law, "for which action the Government of Chile is liable to respond in damages under . . . well-known and universally recognized principles of international law . . .." U.S. Dep't of State, The Alsop Claim—The Case of the United States 211 (G.P.O. 1910).* The principle clearly applies here where the rights of the Respondent and Petitioner were established under Cuban law before Respondent left Cuba and made demand in Pennsylvania.

In the *Case of the S.S. "Lotus"* (*France* v. *Turkey*), P.C.I.J., Ser. A., No. 10 (1927), 2 Hudson, World Court Reports 20 (1935), the tribunal upheld the application of Turkish law to a maritime incident occur-

---

* The claimant's contract related to mining properties in Bolivian territory when the contract was made which was later occupied by Chile by conquest before the claimant had reduced the properties to possession. The tribunal found that it was "clear from the facts that whatever might have been the theoretic strength of [the claimant's] position under Bolivian law, he had not in fact been able under that law and administration to obtain possession of the mines . . . ." 5 Am. J. Int'l L. at 1097. In denying the claim the tribunal in no way questioned the principle that interference with established foreign contractual rights creates a liability to respond in damages under international law.

ring outside Turkish waters; but the tribunal again clearly acknowledged the strength of the contention of the Government of France that without significant contacts between Turkey and the incident in question the action of the Turkish court would have raised serious questions under international law. See 2 Hudson, World Court Reports at 35.

In *Lauritzen* v. *Larsen, supra,* a limited construction was given by this Court to the jurisdictional scope of the Jones Act primarily because a broader construction would not have been in conformity with principles of international law recognized by the Court.* The case involved negligent injury to a Danish seaman on board a Danish ship in Havana harbor. The employment contract was made in New York, the seaman was returned to New York at the completion of the agreed period of service, and the ship itself frequently and regularly stopped at United States ports. *Id.* at 582-83. Contacts with the United States were therefore perhaps sufficient to have satisfied the analogous requirements of the Fourteenth Amendment discussed above and referred to in the Court's opinion. *Id.* at 590-91. The Court, after noting that contacts with Denmark were clearly predominant, observed

> "in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; nor should we forget that any contact which we hold sufficient to warrant application of our law to a foreign transaction will logically be as strong a

---

* The Act itself, as this Court pointed out, is in terms exceedingly broad. It provides simply that "any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action. . . ." 41 Stat. 1007, 46 U.S.C. § 688.

> warrant for a foreign country to apply its law to an American transaction." *Id.* at 582.

Our statutes, the Court declared, should be "construed to apply only to areas and transactions in which American law would be considered operative under prevalent doctrines of international law." *Id.* at 577.

Lauritzen was followed in *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, where the Court declared:

> "The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this Court is adjudicating issues inevitably entangled in the conduct of our international relations. We need not repeat the exposition of the problem which we gave in *Lauritzen* v. *Larsen.* Due regard for the relevant factors we there enumerated, and the weight we indicated to be given to each, preclude application of American law to the claims here asserted." *Id.* at 383.

In *Romero,* on similar facts except that the injury occurred in New York harbor, separate claims against the foreign corporate defendant both under the Jones Act and under general maritime law were ordered dismissed in deference to controlling Spanish law.* *Accord, McCulloch* v. *Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10. See also *Deutsche Bank Filiale Nurnberg* v. *Humphrey, supra; Zimmermann* v. *Sutherland, supra.*

---

* Identical claims against United States corporations were remanded for further proceedings. *Id.* at 385.

Similarly the New York Court of Appeals acknowledged an obligation under international law to give effect, after recognition of the Soviet Union, to Soviet laws discharging the liability of American insurance companies under contracts written in Russia. *Dougherty* v. *Equitable Life Assur. Soc'y and 25 Other Cases,* 266 N.Y. 71, 193 N.E. 897 (1934). Here more than respect for Cuban law is involved. Important rights of Canada on behalf of its nationals are to be safeguarded against the enlargement of obligations under contracts entered into outside of the United States with non-resident foreigners.

The fact that a state court rather than a federal court has sought to impose its law to control the transaction at bar is no defense to the United States under international law. See, *e.g.,* 5 Hackworth, *Digest of International Law* 595 (1943); Restatement, The Foreign Relations Law of the United States § 174 (Prop. Off. Draft, 1962). The issue of whether the Pennsylvania court's judgment involves the United States in a violation of international law is therefore one of direct and paramount federal concern.

That questions involving "ordering our relations with other members of the international community . . .," including acts which might involve the United States in a violation of international law, are substantial federal questions was settled in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 425. The Court expressly approved the view of Professor Philip C. Jessup, now a member of the International Court of Justice, "that rules of international law should not be left to divergent and perhaps parochial state interpretations." *Ibid.* Such matters, the Court said, "must be treated exclusively as an aspect of federal law." *Ibid.*

The Court of course went further, holding that while it should exercise restraint in questioning whether the act of a foreign state complied with international law it should reverse decisions of courts of the United States which might offend a foreign nation, even though not involving the United States in a violation of international law. This being so, wherever there is a reasonable showing that a decision below could involve the United States in a violation of international law, it is not only a right of this Court, but a duty recognized by this Court, to review that decision.

CONCLUSION

For the foregoing reasons Petitioner prays that this petition for certiorari be granted.

Respectfully submitted,

JOHN G. LAYLIN
OWEN B. RHOADS
Attorneys for Petitioner

COVINGTON & BURLING
DECHERT, PRICE & RHOADS
Of Counsel

June 15, 1965

INDEX TO APPENDIX

	Page
Opinion and Order of the Court of Common Pleas of Montgomery County, Pennsylvania	1a
Decisions of the Superior Court of Pennsylvania	4a, 5a
Opinion of the Superior Court of Pennsylvania	6a
Order of the Supreme Court of Pennsylvania	16a
Cuban Law No. 13	17a
Cuban Decree No. 1384	20a
Cuban Law No. 568	23a
Cuban Law No. 930	25a
Letter dated May 4, 1961, from G. C. Donley to Roy L. Cameron, Jr.	26a

APPENDIX

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA.

ALICIA VARAS

v.

THE CROWN LIFE INSURANCE COMPANY.

No. 61-5345.

Opinion and Order

GROSHENS, *J.*, December 2, 1963. This case is before the court on motions by the plaintiff and by the defendant for a new trial and for judgment notwithstanding the verdict.

The material facts are not in dispute and are as follows:

In 1944 the plaintiff's mother, as guardian of the plaintiff, applied to the defendant insurance company for insurance on the life of the plaintiff who was then a resident and citizen of Cuba. As a result of that application the defendant, a Canadian company, executed and delivered a life insurance policy to the plaintiff or her mother in Havana.

Under the insurance policy all payments to or by the defendant were to be in United States dollars. All premiums were paid in Cuba. From 1944 to 1951 an annual premium of 217 United States dollars was paid. In 1951 United States currency ceased to be legal tender in Cuba, and from then through 1960 an annual premium of 217 Cuban pesos was paid. During this latter period the exchange rate of United States dollars for Cuban pesos was one for one. In August of 1960 the plaintiff left Cuba as a refugee, and she has been a resident of the United States since that time.

In April 1961 the plaintiff made a written demand for the cash surrender value of the policy at an office of the defendant located at Haverford, Montgomery County. This demand was refused, and the plaintiff brought this suit seeking to recover the cash surrender value of the policy, or, in the alternative, to recover the premiums which she had paid.

The court directed a verdict for the plaintiff in the amount of the premiums paid and left it to the jury to determine whether to allow interest from April 1961 on that amount. The jury allowed the plaintiff six per cent interest, making a total verdict in her favor of $4,113.18.

Both parties then filed the motions in question here. The plaintiff maintains that under the insurance contract she could properly require the defendant to perform its obligations in Pennsylvania and that she is entitled to the full cash surrender value of the policy. The defendant argues that the only place of performance under the contract is Havana, and insists that it is ready to perform there and is not obligated to perform at any other place.

Where a life insurance contract does not fix the place of performance the presumption is that the contract was to be performed where it was entered into: White v. Empire State Degree of Honor, 47 Pa. Superior Ct. 52 (1911). The contract in the instant case was entered into in Cuba, and since no place of performance was stated, the contract must be performed in Cuba. Therefore, no recovery can be had based on a demand for performance in Pennsylvania.

It is impossible for the plaintiff to return to Cuba to recover under the contract, and any agent collecting for her in Cuba would not be able to forward the money to the United States. If performance on one side or the other of a contract becomes excusably impossible, and the party excused by impossibility has partly performed the contract on his side before impossibility arises, the law implies a

quasi-contractual obligation on the party receiving such performance to pay its fair value: West v. Peoples First National Bank & Trust Company, 378 Pa. 275 (1954); see 6 Williston on Contracts (rev. ed.) 5536, 5537. The same principle is applicable here. The plaintiff is obligated to go to Cuba in order to receive any benefits under the insurance contract. It is excusably impossible for her to do so. She had partly performed the contract before this impossibility arose. She is entitled to recover the value of that performance.

Her right to recovery is not based on the contract but is under the theory of unjust enrichment: White [sic] v. Peoples First National Bank & Trust Company, *supra*. Therefore, the law governing the performance of the insurance contract is not applicable, and any Cuban law which might bar such a recovery is of no effect. Since no contractual right is being enforced here, the International Monetary Fund Agreement is not involved.

It is true that the defendant has partly performed the contract on its side in that it insured the life of the plaintiff for a period of seventeen years. In return for this service the defendant had the use of the plaintiff's money during this period. The total premiums paid are less than the cash surrender value of the policy at the time the demand was made. The use of the plaintiff's money free of any charge for interest is fair compensation for the insurance coverage provided. The result reached is equitable as well as legally proper.

And Now, December 2, 1963, the motions of the plaintiff for a new trial and for judgment notwithstanding the verdict and the motions of the defendant for a new trial and for judgment notwithstanding the verdict are dismissed.

By THE COURT,
(Sgd.) David E. Groshens,
David E. Groshens,
Judge.

IN THE SUPERIOR COURT OF PENNSYLVANIA
OCTOBER TERM, 1964

ALICIA VARAS

v.

THE CROWN LIFE INSURANCE COMPANY,
Appellant

No. 93

Decision

Filed: September 17, 1964

The appeal of the defendant company is sustained and judgment non obstante veredicto in favor of The Crown Life Insurance Company, the defendant-appellant, is directed to be entered.

WATKINS, *J.*

IN THE SUPERIOR COURT OF PENNSYLVANIA
OCTOBER TERM, 1964

ALICIA VARAS, *Appellant*
v.
THE CROWN LIFE INSURANCE COMPANY } No. 176

Decision

Filed: September 17, 1964

The appeal of the plaintiff is sustained and judgment non obstante veredicto in favor of the plaintiff, Alicia Varas, is directed to be entered for the guaranteed cash surrender value of $3945 with interest from April 27, 1961.

WATKINS, *J.*

IN THE SUPERIOR COURT OF PENNSYLVANIA

ALICIA VARAS v. THE CROWN LIFE INSURANCE COMPANY, *Appellant* ALICIA VARAS, *Appellant* THE CROWN LIFE INSURANCE COMPANY	October Term, 1964 Nos. 93 and 176

Appeals from the judgment of the Court of Common Pleas of Montgomery County, No. 61-5345 of 1961.

Opinion

FILED: September 17, 1964

By WATKINS, *J.*

These appeals by the plaintiff, Alicia Varas, and the defendant, The Crown Life Insurance Company, are from the judgment of the Court of Common Pleas of Montgomery County, entered on a directed verdict in favor of the plaintiff and against the defendant in the amount of $3680 with interest, representing the amount of premiums paid on an insurance policy; and from the refusal of post trial motions for judgment n.o.v. or for a new trial.

The policy in suit was applied for by the mother of the plaintiff, as her guardian, in Havana, Cuba, in April, 1944. The policy, written upon the life of the plaintiff, was delivered by the defendant company in Cuba on July 12, 1944 with a date of issue of May 23, 1944. The contract was a twenty-year endowment policy in the face amount of $5000. At the time of the delivery the plaintiff was a resident and citizen of Cuba; the defendant was a Canadian insurance company doing business and having a place of business in Cuba. Until 1951 premiums were paid in United States dollars which were legal tender at that time. From 1951 and through 1960 the premiums were paid in pesos.

The Canadian company defendant at the time of the suit was doing business and had an office both in Cuba and in Montgomery County, Pennsylvania, U. S. A. The trouble in Cuba caused the plaintiff to leave that country in August, 1960 and she has been a resident of the United States since that time in Florida and Georgia and expresses the intention of making and continuing her residence here. She is a political refugee without citizenship. She has been admitted as a permanent resident of the United States and is a civil citizen. Blanco v. Pan American Life Ins. Co., 221 F. Supp. 219 (1963); U. S. v. Wong Kim Ark, 169 U.S. 655, 18 S. Ct. 459 (1897).

The plaintiff demanded payment by the company of the guaranteed cash surrender value of the policy and the company refused payment on the ground that the contract is governed by the laws of Cuba. The plaintiff, by a suit in assumpsit, demanded the cash surrender of the contract of insurance as provided in the policy or in the alternative, the return of the premiums paid. The defendant's answer admitted the execution and delivery of the policy of insurance and that the premiums were paid but, as new matter, alleged that performance in the United States is prohibited by Cuban law and its effect upon the contract,

Cuba being the place of the creation of the obligation; that the monetary provisions of the policy were waived and plaintiff estopped from raising them because of the payment of premiums in pesos; and because of the International Monetary Fund Agreement.

At the conclusion of the trial a verdict was directed against the plaintiff on the first cause of action, the cash surrender value, and in her favor on the alternative cause of action, the return of the premiums paid. The jury determined that she was entitled to interest. The plaintiff and defendant filed cross post trial motions and they were dismissed. Both parties appealed.

Since oral argument, we have been asked by the defendant company to disregard the question raised as to the impact of the International Monetary Fund Agreement as on April 2, 1964, effective on that date, the Republic of Cuba had withdrawn from membership.

Cuban Law No. 13 passed on December 23, 1948 provided that United States currency should cease being legal tender and cease having debt redeeming force but by Decree 1384 dated the 20th of April, 1951 extended the status of legal tender of currency of the United States until June 30, 1951 and provided that after that date it would cease to be legal tender or have debt redeeming force. It also provided that all contract obligations enforceable in Cuba should be settled only in the national currency.

In January of 1959 the Batista government was replaced by that of Fidel Castro. The Castro government was recognized and still continues to be recognized by the United States as the government of the Republic of Cuba.

Law No. 568 effective October 2, 1959 made all transfers, payments or any dealings in foreign currency felonies and by a law dated February 23, 1961 provided that only coins minted and bills issued by the National Bank of Cuba should be legal tender.

The defendant contends that Decree 1384 modified its dollar obligation to the plaintiff while law 568 must be interpreted to prohibit payment of the policy in dollars. The defendant therefore refused payment on that theory. The defendant company contends that where the contract is silent as to performance the law of the place where it is made governs. The plaintiff claims that not only can the place of performance be inferred from the policy to be the United States as well as Cuba but that the place of performance is, to wit, the place where the attempt to exercise the option of the payment of the guaranteed value took place, which was Pennsylvania, so that the monetary laws of Cuba do not apply.

The court below agreed with the defendant company that the monetary laws of Cuba apply as it was the place of the making of the contract and "since no place of performance was stated, the contract must be performed in Cuba. Therefore, no recovery can be based on a demand for performance in Pennsylvania."

However, the court below agreed with the plaintiff that it was excusably impossible to obtain performance in Cuba and said: ". . . the law implies a quasi-contractual obligation on the party receiving such performance to pay its fair value: West v. Peoples First National Bank & Trust Company, 378 Pa. 275 (1954) . . . . The same principle is applicable here. The plaintiff is obligated to go to Cuba in order to receive any benefits under the insurance contract. It is excusably impossible for her to do so. She had partly performed the contract before this impossibility arose. She is entitled to recover the value of that performance." This is on the basis of unjust enrichment and the law governing the performance of an insurance contract is not applicable and so Cuban law that might bar a recovery is of no effect.

We believe that the plaintiff was entitled to enforce the terms of the contract in regard to the cash surrender option

in Pennsylvania. We do not believe that the monetary laws of Cuba are applicable.

The contract, admittedly, made in Cuba with a foreign insurance company provided that the currency contemplated for use by the parties was "dollars, lawful money of the United States of America . . . and every amount payable to or by the company under this policy shall be payable in such currency." The entire contract was written in Spanish but it is noteworthy that it unequivocally called for all payments to be in United States dollars. This was not by happenstance but was done with the deliberate intention to make sure that the sound currency of the United States was the currency to be used rather than the uncertain, and even then fluctuating, value of Cuban pesos. We can take judicial notice of this factual consideration. Pan American Life Ins. Co. v. Recio, 154 So. 2d 197 (Fla. 1963). Up until the advent of the Castro regime the monetary exchange in Cuba between dollars and pesos was one for one. Today the peso in the United States is valueless. In the application for the policy the following question was asked. "State here any special provisions desired in the policy"; the answer was "currency of the United States of America". So both parties to this contract agreed to a "special provision" for payment in dollars. The policy further provided that payment of premiums must be made to the home office of the company or elsewhere in exchange for the company's printed form of official receipt.

The Republic of Cuba had the right and the power to specify what would be legal tender within its territory and at the time of the contract American dollars were legal tender in the Republic. The currency selected by the plaintiff and the defendant in the contract was the national currency of the United States, and it was only incidentally a currency having debt redeeming force in Cuba in 1944. The national currency of Cuba was pesos but the parties chose

to express their obligations in dollars. Only the Congress of the United States has the legislative jurisdiction to alter the characteristics of the dollar and so long as the contract is performable in the United States no act of the Republic of Cuba can alter the duty of performance here.

"Generally a contract is construed under the law of the place where it was made, but when the place of performance differs from the place of making, the law of the place of performance may prevail . . . Thus a contract normally is interpreted according to the lex loci contractus . . . Generally a contract is deemed to have been made when and where the last act necessary for its formation is done . . . regardless of the place of making or place of performance of a contract the lex fori governs the form of the remedy." 8 P. L. E. § 122.

The court below entered judgment against the plaintiff in her claim for the guaranteed value of the policy because of the general rule holding: "Where a life insurance contract does not fix the place of performance the presumption is that the contract was to be performed where it was entered into: White v. Empire State Degree of Honor, 47 Pa. Superior Ct. 52 (1911). The contract in the instant case was entered into in Cuba, and since no place of performance was stated, the contract must be performed in Cuba. Therefore, no recovery can be had based on a demand for performance in Pennsylvania." By this decision the court below held that the Cuban monetary laws prevented acceptance of the option in the United States.

It is true that a contract is deemed to have been made when and where the last act necessary for its formation is done and that place, so far as this endowment policy is concerned, is the Republic of Cuba where the delivery of the policy took place. But contained in the policy contract and an integral part of the consideration in its purchase are

several options, one of which is pertinent to this case and reads as follows:

> "Guaranteed values. At the end of the third or any subsequent policy year, or within thirty-one days thereafter, provided all premiums to date have been paid in full, and in the absence of any legal restrictions, and upon legal surrender of this policy to the Company for cancellation, the Company will grant, subject to adjustment in case of indebtedness to the Company, one of the following options: (a) A cash value of the amount stated in the following schedule:
>
> | End of Policy Year | Cash Value |
> |---|---|
> | ••• | ••• |
> | 17 | $789.00 |
> | ••• | •••" |

It is also noteworthy that beneath the schedule of guaranteed values for each $1000 of sum insured the following appears: "The currency unit of the above guaranteed values is that stipulated on the first page hereof" (Dollars, lawful money of the United States of America).

The election to accept this option could be made at any time before performance of the obligation of the principal contract by its maturity or the death of the insured. The option has been described as a continuous, irrevocable, offer which can only materialize into a contract by its acceptance by the defendant. U. S. v. Penn Mutual Life Ins. Co., 130 F. (2d) 495. "The cases so far as we are advised are at one in holding that the rights of the parties are fixed when an option given by a policy is exercised by the insured." Lipman v. Equitable Life Assurance Society, (C. C. A. 4) 58 Fed. (2) 15, at page 118; Goldin, The Law of Insurance in Pennsylvania, Vol. II, 2d Ed., § 763; 91 A. L. R. 1450. The option is executory so the law governing the place of performance in this case, the acceptance of the offer of guaranteed payment is the place of its execution and per-

formance. Lieberkind v. Mexican Light and Power Co., 116 F. 2d 971 (2d Cir. 1941).

So if we agree with the court below that the principal contract, the endowment policy, was made in Cuba and refuse to accept the contention of the plaintiff that it can be inferred from the currency provisions in the policy that the place of performance was the United States of America this reasoning would not apply to the option where only the offer was made in Cuba. The last act necessary to create the obligation of the payment of the cash surrender value took place in the United States. An inference is created by the currency provisions that the place of performance of the option could very well be either Cuba or the United States. Once the insured exercised her option under the policy, without anything further being done by the insurer, the rights of the parties are fixed. Pacific States Life Insurance Co. v. Bryce, 67 Fed. (2) 710; Lipman v. Equitable Life Assurance Society, *supra.* See also: Cases Annotated in 91 A. L. R. 1450.

The contract provides that the guaranteed value will be paid upon "legal surrender of this policy to the company for cancellation." The home office of this company is in Toronto, Canada where the policy was executed by the officers of the company and its legal residence is wherever it has an office and wherever it is legally entitled to do business. One such legal residence is Montgomery County, Pennsylvania and it was to this office that the legal surrender of this policy was directed.

It is true that the option itself says: "In the absence of any legal restrictions", but this could only refer to legal prohibitions as to payment of such guaranteed values and does not refer to the medium of payment and no such restriction appears in those sections applying to medium of payment.

The defendant maintains an office to do insurance business in the Commonwealth of Pennsylvania; it is the place

where plaintiff exercised her option, accepted the continued offer of the defendant and by this performance created the full contractual obligation. David v. Veitscher Magnesitwerke Actien Gesellschaft, 348 Pa. 335, 35 A. 2d 346 (1944).

We agree that the currency laws of Cuba must be honored by the government of the United States and by our courts if Cuban law is applicable. The power of a sovereign state over its currency is absolute. This was especially true when both countries were signatories to the Bretton Woods Agreement, a treaty of the United States and therefore a part of the supreme law of the land. The Bretton Woods agreement specifically requires the recognition and honoring of Cuba's currency laws. The Bretton Woods agreement brought into being the "International Monetary Fund Agreement", 60 Stat. 1401-1411, 1945. However, Cuba has withdrawn from membership so that a new look must perchance be taken at the cases based on the fund agreement when membership was held by both countries. It is true, however, that even prior to the currency treaty foreign exchange regulations were held to be applicable in suits in the United States. This is in line with our public policy to prevent evasion of currency obligations in the nation where the obligation is payable. Steinfink v. N. German Lloyd S. Co., 176 Misc. 413, 27 N.Y.S. 2d 918 (App. Div. 1941).

The plaintiff contends that the Cuban laws were not properly admitted and further they were not proven to be currently in effect. We will not discuss this question because we are holding that even if they are in effect, the law of Cuba is not applicable and the law of Pennsylvania is, where the creation of the contractual rights under the option and its performance took place in Pennsylvania.

"The place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed." Restatement of the Law, Conflict of Laws, § 355, page 434 (Restate-

ment of the Law, Conflict of Laws, Pa. Annotations § 355, page 122. Pennsylvania law is in accord with Restatement. See collection of cases).

"When a contract involves a promise to do one thing or another at the option of either party the place of performance is undetermined until the option is exercised, and it then becomes the place of performing the promise which is chosen by the party having the option." Restatement of the Law, Conflict of Laws, § 356, page 435.

In the instant case the plaintiff had the option in the event she did not wish to await the maturity of the policy, to accept the offer of the guaranteed surrender value. She did this in Pennsylvania, where the defendant had a corporate residence and was authorized to do business.

As to the waiver and the contention of estoppel there is some question in this record whether payment of premiums by the plaintiff was in dollars even though the company deposited it in pesos. But again if we determine that the option was exercised in Pennsylvania when the offer was accepted the rights of the parties are fixed at that time in a full contractual obligation.

The witness for the company admitted that regardless of whether pesos or dollars were delivered to the company in Cuba in payment of premiums, such payment would be converted to a peso credit upon deposit in the bank. The notice of premium in some instances contained the legend: $217 M. N. This was indicated to mean "Moneda Nacional" so that the premium so marked called for payment in pesos rather than dollars and the plaintiff contends that this is a modification of the policy. The contract itself provides that any modification or change in its terms must be endorsed on the policy to be binding. The "M. N." provision was not endorsed on the policy.

It just doesn't make common sense that the meeting of minds of a Canadian insurance company doing business

and having a corporate residence in Cuba, as well as in a number of other countries, and a Cuban national in the execution of an endowment insurance policy that provides that all payments under the contract shall be in the currency of another country, also a corporate residence of the company, includes the intention that the only place of performance is in Cuba and the company is not obligated to perform at any other place. This is especially true when the law protects the insured from contracts prepared by the insurer by providing that their interpretation, if any ambiguity appears, shall favor the insured. Nothing in the policy limits performance of the option. The court should apply a rule which protects the insured. Blanco v. Pan American Life Insurance Co., 221 F. Supp. 219 (1963).

The appeal of the defendant company is sustained in No. 93, October Term, 1964 and judgment non obstante veredicto in favor of The Crown Life Insurance Company, the defendant-appellant, is directed to be entered; and the appeal of the plaintiff in No. 176, October Term, 1964, is sustained and judgment non obstante veredicto in favor of the plaintiff, Alicia Varas, is directed to be entered for the guaranteed cash surrender value of $3945 with interest from April 27, 1961.

IN THE SUPREME COURT OF PENNSYLVANIA

No. 294 A

Miscellaneous Docket No. 13

ALICIA VARAS

v.

THE CROWN LIFE INSURANCE COMPANY, *Petitioner*

Order

Filed: March 22, 1965

PER CURIAM

Petition dismissed.

Law No. 13 of December 23, 1948

I, CARLOS PRIO SOCARRAS, President of the Republic, do hereby make known that Congress has voted and I have sanctioned the following:

LAW

TITLE I

THE NATIONAL BANK OF CUBA

CHAPTER I

Constitution and Purpose of the Bank

Article 1. An autonomous credit institution with juridical capacity is hereby created for an indeterminate duration under the denomination of National Bank of Cuba, which shall be governed by the provisions of this Law and by its own by-laws.

Article 2. The National Bank of Cuba shall have its domicile in the City of Havana, but it may establish branches within the national territory and appoint agents or correspondents in said territory and abroad.

Article 3. The purpose of the National Bank of Cuba is to centralize the monetary reserves, supervise and control credit, create and withdraw media of payment, act as Trustee (Fiduciary Agent) of the Currency Stabilization Fund, and cooperate with the latter in the exchange policy of the Nation; to serve as Financial Agent and Advisor of the State; to exercise, in respect of private banking institutions, the functions vested in it hereunder; and to act as a clearing house (compensation chamber).

* * *

Chapter III

Organization and Government

• • •

Section Third

The Board of Direction

• • •

Part Two

Powers of the Board

Article 38. The Board of Direction shall manage the National Bank of Cuba in accordance with the provisions of this Law and of its By-Laws after hearing the recommendations of the Assembly of Stockholders and the Currency Stabilization Fund, and is vested with the following powers:

• • •

12) To accept or reject the financing o[f] transactions for the purchase of gold, foreign exchange or securities which the Currency Stabilization Fund may request pursuant to the provisions of this Law.

• • •

Title II

The Currency Stabilization Fund

Sole Chapter

Organization and Operation of the Fund

• • •

Article 81. The Fund shall deliver currencies in exchange for national currency to those who shall apply therefor in order to make payments abroad.

• • •

Title III

National Currency

Chapter I

Regulation

• • •

Article 90. The bank notes of the National Bank shall be legal tender and shall have unlimited releasing force.

The silver and nickel fractional coins shall be legal tender; the silver coins shall have releasing force in the proportion of eight per cent (8%) of the amount that has to be paid and shall fully release obligations not exceeding ten pesos; the nickel coins shall be legal tender for the payment of any amounts not exceeding one peso.

• • •

Article 95. The national currency, including the bank notes of the National Bank, shall be the only legal tender currency in the national territory and must be accepted, as provided in Article 90, hereof, in payment of obligations contracted or payable in the Republic.

• • •

Article 97. The currency of the United States of America shall cease being legal tender and having releasing force in the national territory, one year after the date on which the National Bank begins operating.

The Executive Power, shall extend this period for an additional period not exceeding one more year if recommended by the National Bank.

At the request of their holders, the National Bank shall exchange currency of the United States of America for national currency.

• • •

This law shall become effective from its publication in the official Gazette of the Republic.

Now, Therefore: I hereby direct that this Law be fully observed and enforced.

Done at the Presidential Palace, in Havana, this 23rd day of December, 1948.

CARLOS PRIO SOCARRAS

Manuel A. Varona
Prime Minister

Antonio Prio Socarras
Minister of the Treasury

(Official Gazette–Special Edition #35–December 30, 1948).

Decree No. 1384 of April 9, 1951

WHEREAS, Law No. 13, of December 23, 1948 provided that the currency of the United States of America shall cease to be legal tender and to have debt redeeming force in the territory of the Nation one year after the date on which the "Banco Nacional de Cuba" (National bank of Cuba) commenced operating, unless the Chief Executive, on the recommendation of said Bank, should extend that period for another period not exceeding one year. And,

WHEREAS, the above mentioned authority to extend for one year the status of legal tender and debt redeeming force of the United States currency in the national territory ought to be construed to cover the possibility of extending said period for a shorter additional period, and to provide for its expiration in such a way that the effects of one and the other provision will not extend beyond said additional one year period. And,

WHEREAS, the "Banco Nacional de Cuba" commenced operating on the 27th day of April, 1950, and then, within the first one year period allowed by said Law No. 13, of December 23, 1948, the Board of Directors thereof requested this Chief Executive to extend the status of legal

tender and debt redeeming force of the United States currency in the national territory until June 30, 1951. And,

WHEREAS, the Board of Directors of said "Banco Nacional de Cuba" has further recommended to this Chief Executive the adoption of certain supplementary regulations in connection with the cessation of said legal tender status and debt redeeming force on June 30, 1951.

NOW, THEREFORE: In pursuance of the powers vested in me by the Constitution and other statutes of the Republic, on the recommendation of the "Banco Nacional de Cuba", as endorsed by the Minister of the Treasury, and with the approval of the Council of Ministers, I hereby,

RESOLVE:

First. To extend the status of legal tender and debt redeeming force of the currency of the United States of America in the territory of the Nation until the thirtieth day of June of the current year.

Second. Beginning on the date on which the United States currency shall cease to be legal tender and have debt redeeming force in the territory of the Nation, all obligations contracted or payable in the national territory shall be expressed and settled in national currency pursuant to the provisions of Law No. 13, of December 23, 1948, subject to no exception other than those specified in Articles 96, 98 and 113 thereof.

The debtors of obligations not included in said exceptions and the payment whereof in United States currency has been stipulated or agreed upon prior to the cessation of such legal tender status and such debt redeeming force, may settle such obligations at par through the delivery of national currency in the same amounts as those previously expressed in United States dollars.

Third. Upon the cessation of the status of legal tender and debt redeeming force of the United States currency, all

bank deposits theretofore kept under such denomination shall be subject to the provision contained in Article 98 of Law No. 13, of December 23, 1948, which shall be applied in accordance with the following rules:

(a) Banks may continue accepting and keeping deposits in United States currency and in any other foreign currency, but adhering to the provisions of this Decree and of Article 113 of Law No. 13 of December 23, 1948.

(b) All withdrawals of funds shall be made by means of non-transferable and non-negotiable documents drawn in accordance with the following form:

Non-transferable ..... Non-negotiable
(Name of the Bank)

Account No. .....

..... (Place and date)

Please pay to myself the sum of .....

...../100 Dollars and charge same to my account in United States Currency.

$..... .....
(Signature of Depositor)

(c) If the Bank should choose, pursuant to the above-mentioned Article 98 of Law No. 13 of December 23, 1948, to pay in United States banknotes the withdrawals from bank deposits kept under the denomination of United States Currency, such payments shall be made without deducting any expenses, commissions or premiums at the expense of the depositor, who shall be entitled to the free disposition and possession of said currency; and,

(d) If the Bank should choose to pay either in dollar drafts on New York, or in national currency at the then current exchange rate, the election between one and the other form of payment under said Article 98 of Law No. 13 of December 23, 1948 shall be a privilege of the depositor who, by requesting the payment in a dollar draft, shall be deemed to assume the customary transfer expenses and taxes.

Fourth. The "Banco Nacional de Cuba" is hereby directed to attend to the enforcement of this Decree, and to adopt whatever additional regulations may prove necessary.

Done at the Presidential Palace in Havana this 9th day of April of the year 1951.

CARLOS PRIO SOCARRAS
President

Félix Lancís
Prime Minister

José R. Alvarez
Minister of the Treasury

(Official Gazette #92, of April 20, 1951.)

Law No. 568 of September 23, 1959

* * *

Article 1.—For the purposes of this law, the following are considered felonies of monetary contraband:

* * *

6) To export currency or securities, or to transfer funds to points abroad by means of checks, transfers, drafts, letter-orders, orders of payment, compensations, travellers' checks, letters of credit, reimbursements of collections, purchases or sales of passage tickets or through any other similar means, regardless of the origin or source of the funds, except for those cases authorized by the Currency Stabilization Fund, through a member bank or a firm duly authorized by Banco Nacional de Cuba.

* * *

10) To receive and credit to bank accounts kept abroad, or to transfer to third parties collections made abroad for business transacted or services rendered in Cuba, regardless of the source or origin of the respective funds.

* * *

Article 2.—The persons guilty of the felony of currency contraband referred to in the preceding article shall be liable to a penalty of imprisonment for from 6 months and 1 day to 3 years, or a fine of one to two thousand quotas, or both.

If the felony is committed by directors, representatives, officers or employees of banks, corporations, or artificial persons while acting in pursuance of their functions as such, the penalty shall be increased from one fourth to one half, in the discretion of the Court, and the firm to which they belong will be subsidiarily liable for the cash penalties imposed.

Article 3.— a) Any person who sells or in any way assigns, transfers or transmits currency, checks, drafts, orders of payment, travellers' checks or any similar paper in foreign currency shall be liable to imprisonment for from 6 months and 1 day to 3 years, or to a fine of one to two thousand quotas, or both.

Exception is made of tourists with respect to the payments and other operations that are made with the funds they bring with them for their travelling expenses.

b) Any corporate person other than a bank or other entity authorized by the Banco Nacional de Cuba which commits any of the felonies provided for in the preceding Section shall be liable to a fine of from one to two thousand quotas, without prejudice to whatever individual liability may have been incurred by the directors, representatives, officers or employees of the concern.

c) Any person who purchases or otherwise acquires the effects mentioned in Section a) from a natural or artificial person who is not a bank or other entity authorized by the Banco Nacional de Cuba, shall be liable to imprisonment for from 3 months to 1 year, or to a fine of from five hundred to one thousand quotas, or to both.

If any person solicits the foregoing violations from tourists or Cubans who reside abroad and come to visit the Republic, the penalty shall be increased to imprisonment for from 6 months and 1 day to 3 years, or a fine of from 1,000 to 2,000 quotas, or both.

* * *

Article 6.—

* * *

The Currency Stabilization Fund is expressly authorized to order the intervention of any company, business or entity which is presumed to have infringed the provisions of this law.

* * *

Done at the Presidential Palace, in Havana, on this 23rd day of September, 1959. "Year of Liberation".

OSVALDO DORTICOS TORRADO

Fidel Castro Ruz, Prime Minister

Alfredo Yabur Maluf, Minister of Justice.

(Official Gazette No. 183, September 29, 1959)

Law No. 930 of February 23, 1961

Article 14.—The Banco Nacional de Cuba shall regulate the issues of the currency in accordance with the limits approved by the Revolutionary Government, at the proposal of the President of the Bank.

The coins minted and the bills issued shall have the characteristics, designs, denominations, content and other particulars determined by the President of the Republic at the proposal of the President of the Banco Nacional de Cuba.

The coins and bills issued by the Banco Nacional de Cuba shall be the only ones of legal tender and shall be admitted in payment of all obligations demandable in the Republic.

When they may have been or are agreed upon in another currency, they shall be settled and paid necessarily in currency of legal tender. The obligations contracted or agreed upon by the official agencies in charge of foreign trade or of other international operations of the country shall not be included in this provision.

The Banco Nacional de Cuba shall exchange its mutilated bills and coins for others in good condition, in accordance with the rules it may give.

THE CROWN LIFE INSURANCE CO.
HOME OFFICE: TORONTO, CANADA

May 4th, 1961.

Morgan, Lewis & Bockius,
Counselors at Law,
2107 Fidelity-Philadelphia Trust Building,
Philadelphia 9, Pa., U.S.A..
Attention: Mr. Roy L. Cameron, Jr.

Dear Sirs:

Re: Our Policy No. 344,031 on the life of
Alicia Varas Feito

We wish to acknowledge receipt of your letter of April 26th and we also acknowledge receipt of the letters sent to our Philadelphia General Agent, Mr. A. Russell Atwater.

Please be advised that all correspondence concerning this matter should be directed to the undersigned at the Home Office of the Company and not to our General Agent in Philadelphia who has no authority to deal with the matter.

The above policy was applied for, issued and delivered in Cuba in 1944. All premiums since the date of issue until the present have been paid in Cuba through our Havana, Cuba, office. This is a Cuban contract subject to the laws of Cuba.

It is acknowledged that the physical policy is expressed to be payable in United States Dollars in regards to any payments to or by the Company. However, in 1951 a law was passed in Cuba which, in effect, changed the currency of this policy to that of Cuban Pesos. This change in the law was acknowledged by the policyholder by the payment of the premiums subsequent to 1951 in Cuban Pesos which, of course, the Company was obliged to accept. Accordingly, all payments to and by the Company must be made in Cuban Pesos, and since the Castro Government has been in power other laws have been passed which require that payments to and by the Company must be made through our office in Cuba in Cuban Pesos. There are, of course, stringent penalties provided for non-compliance with these laws both from the Company's point of view and your client's point of view. While your client is now residing in the United States and possibly would not be affected by such penalties being invoked by the Cuban Government, it is possible that any members of her immediate family now residing in Cuba (if any) could be subjected to the same penalties.

Under the circumstances we cannot comply with your client's request to pay the cash surrender value of this policy in United States currency and we are sure that you will appreciate that it is because of reasons over which we have no control.

Yours very truly,

G. C. DONLEY
Counsel

GCD:EBT

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 257

THE CROWN LIFE INSURANCE COMPANY,
a Canadian corporation, PETITIONER

v.

ALICIA VARAS

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

MEMORANDUM OF THE UNITED STATES, TRANSMITTING THE VIEWS OF THE GOVERNMENT OF CANADA

By note dated June 15, 1965, the Canadian Embassy expressed to the Department of State the views of the Government of Canada regarding this case, and requested that its note be transmitted to this Court. The Department of State, in turn, has requested the Solicitor General to make the views of the Canadian government known to the Court. Accordingly, we have set forth in an Appendix both of

these communications. In doing so, we intimate no opinion upon the issues presented by the case or the views expressed by the Government of Canada.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

JUNE 1965.

APPENDIX

DEPARTMENT OF STATE
[SEAL] WASHINGTON

Jun 16 1965

Dear Mr. Solicitor General:

The Embassy of Canada has expressed to this Department its interest in the case of *Varas* v. *Crown Life Insurance Company*, decided by the Supreme Court in Pennsylvania on March 22, 1965. We understand that a petition to the United States Supreme Court for certiorari is pending in this case. The Embassy of Canada has requested that the views of the Government of Canada pertaining to this case be made available to the Supreme Court, and has accordingly prepared the enclosed note No. 196 dated Washington, June 15, 1965 for transmittal to the Court.

The Department of State would be grateful if you would take appropriate steps for transmittal of this note to the Supreme Court and to counsel for the parties.

Sincerely yours,

For the Secretary of State:

/s/ Leonard C. Meeker
LEONARD C. MEEKER
The Legal Adviser

Enclosure:

From Embassy of Canada,
dated June 15, 1965.

The Honorable
Archibald Cox,
Solicitor General,
Department of Justice.

CANADIAN EMBASSY AMBASSADE DU CANADA

[SEAL]

Washington, D.C.
June 15, 1965

No. 196

Sir:

I have the honour, acting on instructions of and on behalf of the Government of Canada, to present the following observations of the Canadian government on the pending petition to the Supreme Court of the United States of America, October term 1965, for a Writ of Certiorari to the Superior Court of Pennsylvania, the Crown Life Insurance Company, a Canadian corporation petitioner, versus Alicia Varas, respondent. I have the honour to request you to transmit this note to the Supreme Court of the United States for its consideration.

The Government of Canada wishes to express its grave concern regarding earlier rulings in this case in the Court of Common Pleas of Montgomery County, Pennsylvania, and the Superior Court of Pennsylvania; and in the Supreme Court of Pennsylvania (which dismissed a petition for leave to appeal, without opinion on March 22). The Government of Canada is anxious that the judgment of the Superior Court of Pennsylvania be reviewed on its merits by the Supreme Court of the United States. It is the hope of the Canadian government that the Supreme Court of the United States may take into account its views when the Court considers the petition in question.

The Honorable
Dean Rusk,
The Secretary of State
Washington, D.C.

In particular, without reviewing in detail the material set out in the statement of petition, the Government of Canada wishes respectfully to draw to the attention of the Supreme Court of the United States the following considerations.

Although this petition in itself might appear to involve only the matter of a single policy of insurance—the cash surrender value of which amounts to a mere four thousand dollars—it is the view of the Government of Canada that its implications are of a much greater and more serious magnitude.

The insurance contract in the suit was not made in the United States, nor was it to be performed in the United States. Neither of the parties are citizens or natives of the United States. The contract was made in Cuba by nationals of Cuba and Canada, to be performed in Cuba. The petitioner has proven itself as being ready, willing and able to pay to the respondent the cash surrender value of her policy in pesos in Cuba in accordance with Cuban law. The transaction had no contact whatsoever with the State of Pennsylvania or with the United States. The respondent Varas, a Cuban who presently resides in the State of Florida, was resident in the State of Georgia at the time of the suit. The petitioner has an agent in the State of Pennsylvania, as in many other states and countries.

If the decision of the Pennsylvania Superior Court in the Varas case is allowed to stand, it could have serious economic consequences for the Canadian insurance industry as a whole. In the case of policies originally expressed in currencies other than that of the place of contract, it could result in an interference with contractual relationships between Canadian com-

panies and nationals of foreign countries and it would open the door to other policyholders (who had purchased similar policies outside the United States and who do not reside there) to evade their own countries' foreign exchange regulations by demanding payment of the cash surrender value of their policies in Pennsylvania. The Canadian insurance companies could then be required to provide United States dollars in settlement, no matter what the stated currency of the policy. This could also bring companies into conflict with the laws of the countries where policies were issued. In the case of Cuba the penalty could be confiscation of the companies' assets there.

Altogether there are ten major Canadian life insurance companies which might be affected by this decision, all of which have written policies originally expressed either in sterling, United States dollars or other currencies, but now subject to foreign exchange control regulations. In all, these involve a total cash surrender liability of considerably in excess of one billion dollars. These liabilities are subject to domestic foreign exchange control regulations in the countries where policies were issued and such obligations, if settled in accordance with Pennsylvania law, as it would now appear to stand, could only be met by companies drawing either on their United States dollars reserves or by their using their Canadian dollar reserves and converting them to United States currency. In so doing they could be in violation of laws of original countries where policies were issued.

It is not the present intention of the Government of Canada to ask for leave to intervene in the case directly. However, because of the potential seriousness of the Varas decision, the Canadian government is most anxious that the case be reviewed on its merits by the Supreme Court of the United States.

I therefore hope that you may consider it feasible and appropriate to transmit this note to the Supreme Court of the United States of America in order that the Court may be able to take into account the views of the Government of Canada when it considers the pending petition.

Please accept, Sir, the renewed assurances of my highest consideration.

/s/ C. S. A. Ritchie

[SEAL]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1965 778882 920

October Term, 1965 No. 257

Office-Supreme Court, U.S.
FILED
AUG 13 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

THE CROWN LIFE INSURANCE COMPANY,
A Canadian Corporation,
Petitioner

vs.

ALICIA VARAS, *Respondent*

Respondent's Brief in Opposition to Petition for Certiorari

JAMES M. MARSH
ROY L. CAMERON, JR.
Seven Penn Center Plaza
Philadelphia, Pa. 19103
Attorneys for Respondent

Of Counsel:
J. HARRY LABRUM
LABRUM AND DOAK

INDEX

Page

Questions Presented 1

Counter-Statement of the Case 2

Argument 9

I. The only transaction involved in this case was the Insured's exercise in the United States of her unconditional, continuing right to receive the guaranteed cash values in United States Dollars, for which offer the Insured had paid consideration by way of premiums. Her acceptance of that offer and her demand for payment were made to the Insurer's Home Office and its office in Pennsylvania. The Pennsylvania Court correctly noted that the Policy specifically obligated the Insurer to pay the guaranteed cash values in United States Dollars; that the offer was continuing and irrevocable; that the Policy did not require that demand be made or payment accepted in Cuba or in Cuban Currency or under Cuban Law; and that requiring the Insurer to honor its obligation under its Policy raised no question of due process of law or International Law. The Solicitor General of the United States has already advised this Court in a similar case that such a holding does not present any substantial question of Federal Law or policy, and this Court, having requested those views, declined to review that decision. 9

II. The Insurer first erroneously complains that the Pennsylvania Court, acting on this Pennsylvania transaction, has given extra-territorial effect to Pennsylvania Law, and then makes the astounding argument that the Pennsylvania Court absolutely must give.

Page

Cuban laws extra-territorial effect in Pennsylvania in order to save the insurer from having to honor its unconditional promise to this Cuban refugee, who paid the premiums exacted for this promise to pay guaranteed cash values in United States Dollars. The Pennsylvania court correctly rejected this contention. Its judgment is consistent with other state court decisions which this Court has declined to review, and raises no question of federal or international law 16

Conclusion 21

Appendix A—Memorandum for the United States.. 22

TABLE OF CITATIONS

Cases: Page

Aetna Life Insurance Co. v. Dunken, 266 U.S. 389.. 10n

Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70 (La. 1964), cert. den. 377 U. S. 990 .... 13, 15, 17

The Alsop Claim (United States v. Chile), submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911) 19

Banco Nacional De Cuba v. Sabbatino, 376 U. S. 398 18n

Blanco v. Pan American Life Insurance Co., 221 F. Supp. 219 (DC SD, Fla.) 17

Confederation Life Ass'n v. Ugalde, 164 So. 2d 1, 3 (Fla., 1964, cert. den. 379 U. S. 915) 6, 8, 9-10, 14

Crown Life Insurance Company v. Calvo, 164 So. 2d 813 (Fla. 1964), cert. den. 379 U. S. 915 ..8, 10, 14

Cases: Page

Dougherty v. Equitable Life Assur. Soc'y and 25 Other Cases, 261 N.Y. 71, 193 N.E. 897 ..... 18n

Equitable Life Assurance Society of U. S. v. United States, 331 F. 2d 29 (CCA 1) 11

Griffin v. McCoach, 313 U. S. 498 ..... 10n

Home Ins. Co. v. Dick, 281 U. S. 397 ..... 10, 16n

Illinois Central R. Co. (United States v. Mexico), United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926 [1926-1927]), Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951) 19

Lauritzen v. Larsen, 345 U. S. 571 ..... 18n

Liebeskind v. Mexican Light and Power Co., 116 F. 2d 971 (CCA 2) 13

Lipman v. Equitable Life Assur. Soc. of the United States, 58 F. 2d 15 (CCA 4) 10n-11n, 11

Case of the S.S. 'Lotus' (France v. Turkey), P.C.I.J. Ser. A., No. 10 (1927), 2 Hudson, World Court Reports 20 (1935) 19-20

Pacific States Life Ins. Co. v. Bryce, 67 F. 2d 710 (CCA 10) 11

Pan American Life Insurance Co. v. Botana, 163 So. 2d 767 (Fla. 1964), cert. den. 380 U. S. 943 .. 15, 17

Pan American Life Insurance Co. v. Lorido, 154 So. 2d 200 (Fla. 1963), cert. den. 377 U. S. 990 15, 17, 20

Pan American Life Insurance Co. v. Raij, 156 So. 2d 785 (Fla. 1963), cert. den. 379 U. S. 920 .. 15, 17

Cases: Page

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197 (Fla. 1963) cert. den. 377 U. S. 990 ..... 13, 15, 17

Repsold v. New York Life Insurance Company, 216 F. 2d 479 (CCA 7) 13

Romero v. International Terminal Operating Co., 358 U. S. 354 ..... 18n

Scudder v. Union National Bank of Chicago, 91 U. S. 406 13

Cases of Serbian and Brazilian Loans, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340 (1935) 20

Societe Internationale v. Rogers, 375 U. S. 197 ..... 18n

Tatum v. Guardian Life Ins. Co., 75 F. 2d 476 (CCA 2) 10n

Tierney v. Safeco Ins. Co. of America, 216 F. Supp. 590 ..... 10n

Underhill v. Hernandez, 168 U. S. 250 17

United States v. Garland, 122 F. 2d 118 (CCA 4), cert. den. 314 U. S. 685 11

United States v. Penn Mut. Life Ins. Co., 130 F. 2d 495 (CCA 3) 11

Other Authorities:

Am. Jur. (1960), Vol. 29, Insurance, §628, p. 913 ... 11

Corpus Juris Secundum, Vol. 45, Insurance, §460(b), pp. 123, 124 ..... 10, 11

Restatement of the Law, Conflict of Laws, §355 11, 13, 16

§356 ..... 11, 16

§358 ..... 11, 16

§359 ..... 11, 16

QUESTIONS PRESENTED

1. Whether any federal question is raised by the Pennsylvania court's decision that the terms of an insurance contract, and the relevant circumstances, permitted the inference that the United States was one of the places contemplated for performance of the insurer's unconditional promise to pay, at the option of the insured, specified guaranteed cash values in United States dollars, since (a) the policy did not require the insured to exercise the option in Cuba or in any other particular jurisdiction, and did not include any provision concerning payment other than the insurer's promise to pay, in United States dollars, all amounts due under the policy, after receipt of notice at the Home Office in Canada, and (b) the insurer had registered to do and was doing business in Pennsylvania?

2. Whether any federal question is raised by the Pennsylvania court's holding that the insured's exercise of her unrestricted option to receive, on demand, specified guaranteed cash values in United States dollars, could not be defeated in the United States, where the option was exercised, and where the insurer was doing business, on the ground that (a) international law required American courts to give extra-territorial effect to Cuban laws governing such transactions in Cuba, or (b) that "due process of law" is somehow violated by requiring the insurer doing business in Pennsylvania to fulfill its promise, which was accepted there, by paying the United States dollars it had agreed to pay, rather than the worthless pesos it could have paid if the insured had not become a refugee from Cuba?

COUNTER-STATEMENT OF THE CASE

Petitioner's incomplete statement and irrelevant arguments obscure the most significant facts in the case:

1. The only transaction involved in this case was the insured's exercise, by notice (R 164, 165, 212, 214) to the insurer's Home Office and its Pennsylvania office, of the policy's unconditional option giving her the right to receive, at that specific time, a specified guaranteed cash value ($3,985) in United States dollars, the currency deliberately selected by the insured and expressly stipulated in the application and in the policy (R 134-A, 134-C, being an agreed English translation of the policy; R 134-F, page 2 of the application attached to the policy; opinion of Pennsylvania Superior Court, R. 135, 139, 141, 145).

2. Neither the insured's exercise of the option, nor the resulting obligation on the part of the insurer, had anything to do with Cuba, or Cuban law, or Cuban courts, or Cuban currency, and vice-versa (R 144, 145).

3. This suit was started in Pennsylvania, in the county where the insurer's office was located, after the insurer declined (R. 213) to honor its obligation to make payment in United States dollars, relying solely on the Castro regime's laws, which do not purport to have, and are not entitled to have, any extra-territorial effect.

4. The insured's demand for payment in United States dollars was in pursuance of a right specifically reserved by her in the application and in the policy:

(a) The application contained, on page 2, an instruction to "State here any special provisions desired in the Policy," to which the insured responded:

"Currency of the United States of America." (R 134-F).

(b) The policy included the following:

"Currency — Dollars, Lawful Money of the United States of America. . . . . (dots in original) . . and every amount payable to or by the Company under this Policy shall be payable in such currency." (R 134-A).

"Premiums — TWO HUNDRED AND SEVENTEEN . . . (dots in original) . . . 00/100 DOLLARS, payable in advance every twelve months . . ." (R 134-A).

"Payment of Premiums — All premiums hereunder are payable to and not collectible by the Company. Payment of premiums must be made to the Home Office of the Company, or elsewhere in exchange for the Company's printed form of Official Receipt . . ." (R 134-B).

"Claims — If this policy becomes a claim by death, the Company will, subject to discharge and legal surrender of the Policy to the Company, pay the amount due within thirty days of the receipt at its Home Office of due Proof of Claim . . ." (R 134-B).

"Guaranteed Values — At the end of the third or any subsequent Policy Year, or within thirty-one days thereafter, provided all premiums to date have been paid in full, and in the absence of any legal restrictions, and upon legal surrender of this Policy to the Company for cancellation, the Company will grant, subject to adjustment in case of indebtedness to the Company, one of the following options:

"(a) A Cash Value of the amount stated in the following schedule
Guaranteed Value for Each 1,000 of sum insured

End of Policy Year	Cash Value
17	789

* * *

The currency unit of the above guaranteed values is that stipulated on the first page hereof." (R 134-C).

"War Aviation and Travel." (The relevant parts of this provision may be paraphrased by saying that the benefits payable were limited to return of premiums, adjusted for certain factors, *only* if death occurred outside the "Home Areas," which term was defined as including "the Islands of the West Indies, the Bermudas, and the Continents of North and South America . . ." (R 134-C).

5. The insured's exercise of her option to receive the guaranteed cash value had to be made outside Cuba, to the Home Office of the Company, in Canada, in accordance with paragraph 5 of the "General Conditions" appearing on page 2 of the policy (R 134-B) which includes the following:

"(b) No notice of any kind shall be deemed to have been made to the Company unless made in writing to the Home Office and acknowledged in writing by the Actuary or Secretary of the Company."

6. The insurer's implied attack on the insured's standing to sue in Pennsylvania (see pages 6, 10, 11 of Petition) is completely lacking in candor. At trial, when the insured's counsel undertook to establish the facts concerning the insured's departure from Cuba, her actions looking toward United States citizenship, her intention to reside with relatives in Pennsylvania, and her reasons for suing in that state (R 217-224), the trial judge asked, "Is the Defense going to take any position that she is here as a result of

manoeuvering rather than—" (R 222, 223), the insurer's counsel replied, "No, your Honor" (R 223). The trial judge then sustained the insurer's objections (R 223), thereby excluding this evidence, the absence of which the insurer now emphasizes. As the Superior Court of Pennsylvania stated (R 136), the insured is a lawful, permanent resident of the United States. Indeed, the insurer admitted this at trial and did not challenge the insured's right to protection of her legal rights by American courts (R 219, 220, 223, 224).

7. There is no finding in this record, nor any basis for any finding, that the insured ever treated this policy as transformed into a peso policy.[1] The Superior Court of Pennsylvania decided otherwise (R 145). Moreover, the insurer's obligation to make all payments in dollars could be modified only pursuant to paragraph 5, on page 2 (R 134-B), entitled "General Conditions," subparagraph (a), which states:

> "This policy can not be varied except in writing over the seal of the Company and the signatures of the President or one of the Vice Presidents and the General Administrator or Secretary of the Company, and no previous course of dealing on the part of the Company or anyone on its behalf with the Insured or anyone, whether acting in his behalf or otherwise, shall be deemed to constitute a waiver by the Company of any condition of this policy."

8. Even if, contrary to respondent's opinion, all the insurer's assets in Cuba were to be confiscated as a penalty

---

[1] The Superior Court of Pennsylvania noted that some premium notices contained the legend "$217 M.N.", and erroneously stated, in its slip opinion (R 145) that the *plaintiff* contended this was a modification of the policy. This contention had of course been made by the *defendant* (insurer); it was rejected by the Pennsylvania Superior Court (R 145), which noted that, by its terms, the policy could not be modified in such a manner. (See R 134-B, and the specific provision quoted at page 5 of this brief.)

for paying respondent her guaranteed cash value in the United States, this could not possibly affect the insurer's obligations to third parties outside of Cuba, as is pointed out in the Memorandum of the Solicitor General of the United States (Appendix "A" to this brief), filed at the request of this Court in a case where such confiscation of an American insurer's assets had already taken place. The insurer admitted that any assets of the insurer held in Cuba, other than the minimum deposit of $25,000 required by statute, were maintained there as a matter of business judgment (R 323, 324) and that, prior to Castro, premiums collected in Cuba were sent to New York and elsewhere for investment (R 282).

9. The policy was prepared by the insurer and could have contained — but did not contain — a provision that all payments were to be made in Cuba, as was stated in the policies involved in *Confederation Life Ass'n v. Ugalde*, 164 So. 2d 1, 3 (Fla., 1964), cert. denied 379 U. S. 915, and related cases, relied upon by the insurer. Those cases were distinguished by the same state's courts, in holding the insurer liable under other policies not requiring payment in Cuba, and this Court also declined to review those decisions (see pages 15 and 18 of this brief).

10. The decision below makes it clear that all that is involved here is the refusal of an insurer to fulfill its agreement to pay guaranteed cash value in United States dollars, an obligation which it assumed in return for premiums, fixed by it, and which it received. The insurer's refusal is not based on any claimed defense on the merits, or indeed on any technical legal defense under the law of the place where the option was exercised and where the insurer was doing business. It is based solely on the fact that this refugee's former homeland is now in the hands of a dictator whose laws allegedly would not permit her to receive United States dollars if she had not escaped and were still in Cuba (R 168).

11. As was pointed out by the Superior Court of Pennsylvania, the insured's easily understandable choice (R 139) of United States dollars is by specific terms of the policy made applicable to all payments of guaranteed cash values and her option to receive such payments is not limited in any way (R 145). Similarly, the policy specifically permitted the insured to travel all over North and South America (except Alaska) without limitation of benefits except with respect to travel on other than regularly scheduled commercial flights (R 134-C).

12. There is not a single fact in this record which justifies the insurer's demand that this Court order the insured to abandon her right to receive payment in United States dollars and accept payment in worthless pesos, in the only jurisdiction where the insurer can avoid its liability to her under its own policy, and there is no principle of federal law which would either require or justify such a result. Indeed, the judgment of the Pennsylvania Superior Court, interpreting the policy as not requiring such a result, raises no federal question.

13. That court simply held that the terms of the policy, and the relevant circumstances, permitted the inference that the United States was one of the places contemplated for performance of the insurer's obligations under the "guaranteed cash value" option granted to the insured; that that option, giving the insured the right to receive specified guaranteed cash values in United States dollars, was a continuing irrevocable offer; that such an offer, being executory, the law governing performance was the place of the insured's exercise of the option; that, since the insurer was doing business in Pennsylvania, the policy permitted exercise of the option in that state; and that, by the insured's acceptance of the offer and her demand for payment at the insurer's office in Pennsylvania, the obligation was created there and was enforceable there, under the law of that state.

Obviously, there is nothing for this Court in such a case, and this insurer has so admitted in its Brief in Opposition in No. 452, October Term, 1964, the *Ugalde* and *Calvo* cases, cert. denied 379 U.S. 915 (p. 7 of insurer's Brief in Opposition, quoted and discussed at page 9 of this brief).

Moreover, neither the insurer's extravagant arguments nor the Canadian Government's statement echoing them, can make it a violation of either "due process" or "international law" for an American court having jurisdiction to rule that such an insurer must pay its debts in the currency it agreed to pay them in. The fact that it may be a very substantial windfall for which this and other insurers are grasping, thanks to Fidel Castro, to avoid dollar obligations which the insurers gladly undertook in return for premiums paid either in dollars or in good pesos, scarcely justifies the insurer's request that this Court exercise its discretionary jurisdiction to the detriment of this unfortunate refugee, in a case not otherwise meriting a second thought.

ARGUMENT

I. THE ONLY TRANSACTION INVOLVED IN THIS CASE WAS THE INSURED'S EXERCISE IN THE UNITED STATES OF HER UNCONDITIONAL, CONTINUING RIGHT TO RECEIVE THE GUARANTEED CASH VALUES IN UNITED STATES DOLLARS, FOR WHICH OFFER THE INSURED HAD PAID CONSIDERATION BY WAY OF PREMIUMS. HER ACCEPTANCE OF THAT OFFER AND HER DEMAND FOR PAYMENT WERE MADE TO THE INSURER'S HOME OFFICE AND ITS OFFICE IN PENNSYLVANIA. THE PENNSYLVANIA COURT CORRECTLY NOTED THAT THE POLICY SPECIFICALLY OBLIGATED THE INSURER TO PAY THE GUARANTEED CASH VALUES IN UNITED STATES DOLLARS; THAT THE OFFER WAS CONTINUING AND IRREVOCABLE; THAT THE POLICY DID NOT REQUIRE THAT DEMAND BE MADE OR PAYMENT ACCEPTED IN CUBA OR IN CUBAN CURRENCY OR UNDER CUBAN LAW; AND THAT REQUIRING THE INSURER TO HONOR ITS OBLIGATION UNDER ITS POLICY RAISED NO QUESTION OF DUE PROCESS OF LAW OR INTERNATIONAL LAW. THE SOLICITOR GENERAL OF THE UNITED STATES HAS ALREADY ADVISED THIS COURT IN A SIMILAR CASE THAT SUCH A HOLDING DOES NOT PRESENT ANY SUBSTANTIAL QUESTION OF FEDERAL LAW OR POLICY, AND THIS COURT, HAVING REQUESTED THOSE VIEWS, DECLINED TO REVIEW THAT DECISION.

It is patently clear, not only from Respondent's Counter-Statement of the Case but also from the Opinion of the Superior Court of Pennsylvania, that the only transaction involved in this case was the insured's exercise in the United States of her option to receive the guaranteed cash value in United States dollars, and that option was part of the consideration which the insured received in return for her premium.

First of all, in its Brief in Opposition filed in this Court in No. 452, October Term, 1964, the *Ugalde* and

Calvo cases, cert. denied 379 U.S. 915, this insurer pointed out that those insureds "do not and could not claim" that a state court's "altogether conventional holding" that under its conflict rules the insurer's obligations were governed by Cuban law "presents a federal question" (p. 7, Brief in Opposition). The insurer's contention that a contrary holding would have there raised a federal constitutional issue, "see, e.g., Home Ins. Co. v. Dick, 281 U.S. 397.", could not be made here, where there is no policy provision requiring payment in Cuba, demand for payment had to be made outside Cuba, and payment in United States dollars is specifically required, and no attempt is being made to enlarge the insurer's obligation.

Secondly, it is familiar law that a policy provision giving the insured the option to elect to receive cash surrender values is a continuing, irrevocable offer by the insurer to pay such amounts on demand, and that a contract requiring the insurer to make the payment comes into existence only when the offer is accepted by the insured.

The rule established by the overwhelming weight of the decisions[2] is summarized in 45 *C.J.S.*, Insurance, §460 (b), pp. 123, 124, as follows:

> "Insured's contractual privilege to exercise an option to take the cash surrender value of his insurance policy is one which he has bought and paid for and is irrevocable as long as the policy remains in force. The

[2] The case of *Aetna Life Insurance Co. v. Dunken*, 266 U.S. 389, has no present relevance. That 1924 decision did *not* permit the insurer to avoid its liability under the policy; it simply denied the forum state the right to *add* to the recovery an attorney's fee and a penalty as well. Secondly, the decision has been limited to its own facts by this Court, *Griffin v. McCoach*, 313 U.S. 498, 504-507. One federal trial court has said that "subsequent decisions have eroded the effect of *Aetna* to the extent that it is of little, if any, help to me on the present problem." *Tierney v. Safeco Ins. Co. of America*, 216 F. Supp. 590, 596. And see discussion by L. Hand, J., in *Tatum v. Guardian Life Ins. Co.*, 75 F. 2d 476, 477 (CCA 2).

The correct rule is of course the one set forth by the late Judge Parker in *Lipman v. Equitable Life Assur. Soc. of the United States*,

rights of the parties become fixed immediately on insured's exercise of said option, and, when insured demands a cash surrender value of his policy and at the same time surrenders it to the insurance company, he is then deemed to complete the execise of his option by accepting the open offer of the insurer, as contained in the policy, to pay the cash surrender value on demand; at that point the obligation of insurer to pay the cash surrender value becomes a fixed and perfected obligation or matured debt with all other obligations merged into it . . ."

This rule is also set out in 29 Am. Jur. (1960) Insurance §628, p. 913, and in:

Lipman v. Equitable Life Assur. Soc. of the United States, 58 F. 2d 15, 18 (CCA 4);
United States v. Garland, 122 F. 2d 118 (CCA 4), cert. denied 314 U. S. 685;
Pacific States Life Ins. Co. v. Bryce, 67 F. 2d 710, 712 (CCA 10);
United States v. Penn Mut. Life Ins. Co., 130 F. 2d 495, 497, 498 (CCA 3);
Equitable Life Assurance Society of U. S. v. United States, 331 F. 2d 29, 35 (CCA 1).

It is also familiar law that the place of performance of such a contract is the place where the option is exercised. *Restatement of The Law, Conflict of Laws*, §§355, 356, 358, 359, set out in the footnote.[3]

---

58 F. 2d 15, 18 (CCA 4), that "the rights of the parties became fixed and insured became entitled to the cash surrender value, and nothing more, when she exercised the option. It was not necessary that defendant do anything. There was a meeting of the minds of the parties when insured accepted the continuing offer of the company evidenced by the option."

[3] The *Restatement of the Law, Conflict of Laws* (1934), provides as follows:

"§355. PLACE OF PERFORMANCE.

Consequently, the Superior Court of Pennsylvania was quite correct in holding that the exercise of the option in Pennsylvania, where the insurer had qualified to and was doing business, made that state the place of performance and permitted application of its laws to the transaction. This decision was clearly consistent with the policy which

(1) specified that all payments had to be made in United States currency (R 134-A);

"The place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed."

"§356. ALTERNATIVE CONTRACT.

"(1) When a contract involves a promise to do one thing or another at the option of either party the place of performance is undetermined until the option is exercised, and it then becomes the place of performing the promise which is chosen by the party having the option.

"(2) If an option to do one thing or another is to be exercised by the promisor and he does not exercise his privilege of choice, the place of performance is the place where the less onerous promise was to be performed."

"§358. LAW GOVERNING PERFORMANCE.

"The duty for the performance of which a party to a contract is bound will be discharged by compliance with the law of the place of performance of the promise with respect to:

"(a) the manner of performance;

"(b) the time and locality of performance;

"(c) the person or persons by whom or to whom performance shall be made or rendered;

"(d) the sufficiency of performance;

"(e) excuse for non-performance."

"§359. PERFORMANCE OF CONDITION OR EXERCISE OF OPTION

"The law of the place of performance or happening of a condition or of the exercise of an option in a contract governs the performance of the condition or exercise of the option."

See also §361 through §372.

(2) required that notice be given to the insurer's Home Office in Canada (R 134-B);

(3) permitted the insured to travel throughout North and South America (R 134-C);

(4) did not contain any provision requiring that the option had to be exercised or payment accepted in (or in the currency of) Cuba or indeed any particular jurisdiction (R 145) in those areas in which the insured was specifically permitted to travel.

Such a factual situation fully justified the Pennsylvania Superior Court's conclusion that United States law, and not Cuban law, applied to this transaction. Other states and federal courts have consistently reached the same conclusion in such situations:

Scudder v. Union National Bank of Chicago, 91 U.S. 406;

Liebeskind v. Mexican Light and Power Co., 116 F. 2d 971 (CCA 2);

Repsold v. New York Life Insurance Company, 216 F. 2d 479, 485 (CCA 7);

Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70, 74 (La. 1964), cert. denied 377 U.S. 997;

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197, 198 (Fla. 1963), cert. denied 377 U.S. 990;

And see *Restatement of the Law, Conflict of Laws*, §355, providing that "[t]he place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed."

In this case, the policy does not require that the option be exercised or payment accepted in Cuba, but it does specifically permit travel outside Cuba and requires notice to be given outside Cuba. Moreover, payment in United States

dollars was deliberately specified in the application (R 134-F) and written into the policy (R 134-A, 134-C). The state court was therefore quite within its power and quite correct in holding that Cuban law had nothing to do with the transaction. As the Superior Court of Pennsylvania noted, "it doesn't make common sense," in view of these provisions, to say that a policy "that provides that all payments under the contract shall be in the currency of another country, also a corporate residence of the Company, includes the intention that the only place of performance is in Cuba and the Company is not obligated to perform in any other place." (R 145).

What the insurer is asking this Court to do is to *insert* in the policy a provision that is not there — that the option must be exercised and payment must be accepted in Cuba or in Cuban currency. This is the only way in which this case could be brought within the rule of those few cases in which the insurers have (on significantly different facts) been successful:

Confederation Life Ass'n v. Ugalde, 164 So 2d 1 (Fla. 1964), cert. denied 379 U.S. 915;
Crown Life Insurance Company v. Calvo, 164 So. 2d 813 (Fla. 1964), cert. denied, 379 U.S. 915; and
Sun Life Assur. Co. v. Klawans, 165 So. 2d 167 (Fla. 1964).

Reference to the *Ugalde* decision, upon which the other two decisions were based, discloses, as stated by the Supreme Court of Florida, that "*the policy required that all sums payable thereunder be paid in Havana, Republic of Cuba*, in legal currency of the United States." 164 So. 2d 1, 2; 151 So. 2d 315, 316 (emphasis added).

By contrast, the cases where (as in this case) payment in Cuba was *not* specified, have resulted in the enforcement in the United States of the insurer's promise to pay guaranteed cash values, and this Court has consistently denied certiorari:

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197 (Fla. 1963), cert. denied 377 U.S. 990;
Pan American Life Insurance Co. v. Raij, 156 So. 2d 785 (Fla. 1963), cert. denied 379 U.S. 920;
Pan American Life Insurance Co. v. Botana, 163 So. 2d 767 (Fla. 1964), cert. denied 380 U.S. 943;
Pan American Life Insurance Co. v. Lorido, 154 So. 2d 200 (Fla. 1963), cert. denied 377 U.S. 990;
Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70 (La. 1964), cert. denied 377 U.S. 997.

In the *Lorido* case, upon request of this Court, the Solicitor General of the United States filed a "Memorandum For The United States" in which he stated flatly that "this case does not present any substantial question of federal law or policy" (See Appendix "A" to this Brief). That conclusion was based on a state court decision, similar to the decision here under review, that the place of performance governed the rights of the parties in connection with the insured's demand for payment of the cash surrender value. The Solicitor General took pains to point out that the "act-of-state" doctrine had no application to cases of this kind and that to give effect to Cuban laws allegedly prohibiting the requested payment "would be to accord them an extra-territorial application which has never been required under the act-of-state doctrine."

Of similar significance is the fact that the Solicitor General also pointed out that the admitted expropriation of the property of the American insurer involved in the *Lorido* case "could not determine petitioner's [insurer's] obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba."

The fact that the policy in *Lorido* called for payments in New Orleans, as well as in dollars, does not make that decision inapplicable here. The point is that, unless the insurer specifies a particular place at which the cash sur-

render values must be accepted, those values are due at the place where the option is exercised and the insurer's obligation created. See *Restatement of the Law, Conflict of Laws* §§355, 356, 358, 359, and the authorities cited on pages 15 and 18 of this brief.

In this case, the option was exercised and performance required in Pennsylvania. Obviously, a decision by the courts of that state that, under the facts of this case, the insurer's obligation was enforceable there, where it was created, does not involve any question of either federal law or policy.[4]

II. THE INSURER FIRST ERRONEOUSLY COMPLAINS THAT THE PENNSYLVANIA COURT, ACTING ON THIS PENNSYLVANIA TRANSACTION, HAS GIVEN EXTRA-TERRITORIAL EFFECT TO PENNSYLVANIA LAW, AND THEN MAKES THE ASTOUNDING ARGUMENT THAT THE PENNSYLVANIA COURT ABSOLUTELY MUST GIVE CUBAN LAWS EXTRA-TERRITORIAL EFFECT IN PENNSYLVANIA IN ORDER TO SAVE THE INSURER FROM HAVING TO HONOR ITS UNCONDITIONAL PROMISE TO THIS CUBAN REFUGEE, WHO PAID THE PREMIUMS EXACTED FOR THIS PROMISE TO PAY GUARANTEED CASH VALUES IN UNITED STATES DOLLARS. THE PENNSYLVANIA COURT CORRECTLY REJECTED THIS CONTENTION. ITS JUDGMENT IS CONSISTENT WITH OTHER STATE COURT DECISIONS WHICH THIS COURT HAS DECLINED TO REVIEW, AND RAISES NO QUESTION OF FEDERAL OR INTERNATIONAL LAW.

The insurer's argument that the Superior Court of Pennsylvania has granted extra-territorial effect to Pennsylvania law is transparently false. As has already been

[4] *Home Ins. Co. v. Dick*, 281 U.S. 397, does not help this insurer. There, in a garnishment action in Texas, this Court forbade application of a Texas statute outlawing any contract limiting the time for suit to less than two years, disapproving an attempt to invoke this

demonstrated, the only transaction involved in this case occurred in Pennsylvania where the insurer was doing business and where its obligation arose in accordance with the terms of the policy.

Curiously enough, and in almost the same breath, the insurer insists that the state courts were obliged to apply Cuban law to this Pennsylvania transaction. As pointed out in the "Memorandum For The United States" in *Lorido*, this is the only possible action which would involve the forbidden extra-territorial application of any law.

Finally, as was pointed out in *Blanco v. Pan American Life Insurance Co.*, 221 F. Supp. 219, 227, 229 (DC SD, Fla.), the Cuban laws on which the insurer relies do not even purport to have extra-territorial effect; and, if there were grounds for such an interpretation of those laws, American courts would not enforce them, as was also pointed out in the Solicitor General's Memorandum in *Lorido*, citing the classic case of *Underhill v. Hernandez*, 168 U.S. 250, 252. The Pennsylvania court in this case correctly held that these Cuban laws did not relieve the insurer of its obligation to pay the guaranteed cash value in a proper jurisdiction outside Cuba, as other American courts have held when the policy did not require payment in Cuba:

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197 (Fla. 1963), cert. denied 377 U.S. 990;
Pan American Life Insurance Co. v. Raij, 156 So. 2d 785 (Fla. 1963), cert. denied 379 U.S. 920;
Pan American Life Insurance Co. v. Botana, 163 So. 2d 767 (Fla. 1964), cert denied 380 U.S. 943;
Pan American Life Insurance Co. v. Lorido, 154 So. 2d 200 (Fla. 1963), cert. denied 377 U.S. 990;
Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70 (La. 1964), cert. denied 377 U.S. 997.

---

statute in litigation involving a claim under a policy issued by a Mexican insurer covering a vessel while in certain Mexcan waters, and specfically providing that the policy was subject to Mexican law and that any loss was payable in Mexico, in Mexican funds. A situation more dissimilar to the instant case cannot be imagined.

The insurer has indeed gone far afield in seeking to conjure up some basis for its assertion that the decision below is one which "involves the United States in a violation of international law" (Petition, p. 14).

On this record, such a suggestion verges on the ridiculous. None of the decisions of this Court cited by the insurer involved an analogous factual or legal situation.[5]

The various quotations from other authorities, each of

---

[5] *Lauritzen v. Larsen*, 345 U.S. 571, and *Romero v. International Terminal Operating Co.*, 358 U.S. 354, are of no relevance here. They involved foreign seamen, employed on foreign ships, temporarily in New York, attempting to invoke American statutory remedies for injuries incurred on the foreign ship. This Court's inability to find any basis for applying a long-standing American statutory remedy to disputes involving foreign parties does not provide any parallel between those cases and the instant case.

The insurer's own treatment of *Societe Internationale v. Rogers*, 357 U.S. 197 (page 12, petition), demonstrates that the insurer finds no help therein.

In *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398, 428, this Court said: ". . . we decide only that the Judicial Branch will not examine the validity of a *taking of property within its own territory* by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law" (emphasis added). The Court's agreement with Professor Jessup that "rules of international [and act-of-state matters] law should not be left to divergent and perhaps parochial state interpretations" has no application in this case. Indeed the Solicitor General's Memorandum for the United States filed with this Court in the *Lorido* case, 377 U.S. 990, was submitted to this Court in May of 1964, after its decision in the *Sabbatino* case, and specifically pointed out that the act-of-state doctrine is not involved in these cases.

Dougherty v. Equitable Life Assur. Soc'y and 25 Other Cases, 261 N.Y. 71, 193 N.E. 897, involved Russian contracts payable in Russia in Russian funds from Russian assets, and the policy provided that all disputes were to be settled in Russian courts according to Russian law.

which has been wrenched out of context, are meaningless. A reading of some of the material referred to discloses how inapposite it is.

For example, the insurer refers to ". . . *The Alsop Claim (United States v. Chile)*, submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911)". As indicated at page 1081 of that report, that claim arose out of an *agreement with the government of Bolivia* so long ago as the year 1876, and the matter had been in litigation between the governments of the United States and Chile for more than twenty-five years before the decision then being reported. The claim was one asserted by a liquidator of a firm composed of American citizens which was registered in Chile, with its seat of business in Valparaiso. Among other things, it involved a dispute between the governments of Chile and Bolivia as to the effect of a treaty between them and the extent to which Chile had assumed Bolivia's obligations. The case obviously has no relevance here.

The insurer also cites "*Illinois Central R. Co. (United States v. Mexico)*, United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926, [1926-1927] Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951)." That case involved a claim being prosecuted by the United States government on behalf of an American railroad *against the United Mexican States* for $1,807,531.26, representing the price of ninety-one locomotives sold to the government Railway Administration of the National Railways of Mexico. The matter was handled pursuant to a Convention between the United States and Mexico which provided that (with certain exceptions not here relevant) the Commission would process all claims by nationals of one government against nationals of the other for losses or damages to such nationals or their property. This case is also without relevance here.

The insurer also refers to "*Case of the S.S. 'Lotus' (France v. Turkey)*, P.C.I.J., Ser. A., No. 10 (1927), 2

Hudson, World Court Reports 20 (1935)". That case involved Turkey's *prosecution of the officer of the watch on a French vessel* which collided with a Turkish vessel on the high seas, resulting in the death of eight Turkish crew members. The case involved the issue as to whether or not Turkey had acted in conflict with principles of international law, "contrary to Article 15 of the Convention of Lausanne of July 24, 1923, respecting conditions of residence and business and jurisdiction." This case is also lacking in relevance here.

The insurer also refers to "*Cases of Serbian and Brazilian Loans*, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340, 402 (1935)". These cases also involved claims asserted *against foreign governments* by nationals of various other countries and have no present relevance.

Finally, the argument that if the insurer pays this claim in dollars its assets in Cuba may be expropriated, even if true (which the insured denies), is irrelevant. As the Solicitor General noted in his Memorandum in the *Lorido* case, where expropriation had *already* taken place, "that expropriation could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba." See Appendix to this brief, page 22.

It may be that both this insurer and the Canadian government are now regretting the insurer's failure to specify in the policy that cash surrender values would be paid in Cuba, or in Cuban currency, or out of reserves in Cuba, or only under Cuban law, or by order of the Cuban courts. However, it is scarcely the function of this Court to rewrite this policy, especially when the effect would be to permit the insurer to avoid making the payment it agreed to make to this refugee, in the only currency which is of any use to her, and relegate her to the only forum where she cannot collect what the insurer owes to her.

It would be an incredibly curious and sardonic application of "due process of law" that would require the courts of this country to bring about the confiscation of this Cuban refugee's property out of respect for the decrees of a dictator, especially when those decrees themselves do not purport to apply except "in the national territory."

CONCLUSION

For all the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

JAMES M. MARSH

ROY L. CAMERON, JR.

Attorneys for Respondent

Appendix A

In The

Supreme Court of the United States

October Term, 1963

Nos. 379, 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner

v.

MARIE LORIDO

On Petitions for Writs of Certiorari to the Supreme Court of Florida and to the District Court of Appeal of Florida, Third District

---

MEMORANDUM FOR THE UNITED STATES

By order of the Court, dated April 6, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons outlined below, we believe that this case does not present any important question of federal law.

Respondent, the beneficiary under an insurance policy issued by petitioner upon the life of her late husband, brought this action in Florida (where she presently resides) for the payment of benefits claimed to be due under the policy (Pet. App. 16). The policy had been issued by petitioner, a Louisiana corporation, in 1943, in New Orleans, Louisiana, and was delivered to the insured, a Cuban national, in Havana, Cuba (Pet. App. 16). It provided that

payments by both parties of all obligations would be made in United States currency in New Orleans (Pet. App. 16). The insured duly paid the premiums until his death in Cuba in 1960 (Pet. App. 16).

In contesting the widow's right to the proceeds of the policy, petitioner's chief argument has been that certain decrees of the Cuban Government extinguished its liability under the policy and that, under the act-of-state doctrine, which precludes courts of this country from inquiring into the validity of foreign governmental acts committed in the foreign sovereign's territory, the Florida courts were required to give effect to the Cuban Acts. Specifically, petitioner relies upon a 1959 law allegedly making it unlawful for any Cuban national to receive payment of a debt anywhere except in Cuba (Petition 5; Pet. App. 3-4) and a 1960 law expropriating petitioner's assets in Cuba and purportedly substituting the Cuban Government as obligor with respect to petitioner's liabilities (Pet. App. 5-8). In addition to the argument that these Cuban laws and the act-of-state doctrine require an American court to recognize the petitioner's exoneration from liability under the policy, the petitioner also relies upon Article VIII (2) (b) of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), 60 Stat. 1401, 1411 (Pet. App. 27).

The Circuit Court of Dade County, Florida, rejecting the petitioner's basic contentions, held that, since the place of performance under the insurance policy was the United States and not Cuba, the Cuban decrees relied upon could not relieve the petitioner from its duty to perform in accordance with the terms of the policy (Pet. App. 17-23).[1] The District Court of Appeal of Florida affirmed without

[1] Because the insured had made and received payments in pesos instead of dollars as a result of a 1951 Cuban monetary decree, the court held that the parties had, by their conduct, agreed to payment in pesos instead of dollars (Pet. App. 16, 17). The court did *not* find that a similar novation occurred with respect to the place of payment. This remained New Orleans, pursuant to the written contract,

opinion (Pet. App. 25), and the Supreme Court of Florida denied certiorari.

1. The Florida courts have held that the law of Louisiana (the place of performance and the place of petitioner's incorporation and principal office), and not the law of Cuba (the place of the insured's residence), determines the rights of the parties under the insurance policy which is the subject of this case. This holding presents no substantial question of federal law. In particular, the act-of-state doctrine has no application to the facts of this case.

The principle precluding inquiry by our courts into the validity of foreign acts of state, and requiring the recognition of rights derived from such governmental acts, applies only to acts affecting property or rights within the acting sovereign's territorial jurisdiction.[2] Thus, Chief Justice Fuller's classic statement of the act-of-state doctrine is that "the courts of one country will not sit in judgment on the acts of the government of another *done within its own territory*." (Emphasis supplied.) *Underhill v. Hernandez*, 168 U.S. 250, 252. See, also, *Banco Nacional de Cuba v. Sabbatino*, decided March 23, 1964, slip op., pp. 1, 13, 21, 28. The Cuban acts relied upon by petitioner allegedly purported to extinguish petitioner's liability to make payment in the United States and to prohibit the insured from receiving payment in the United States. To give effect to these laws would be to accord them an extra-territorial application which has never been required under the act-of-state doctrine.

The only act of the Government of Cuba which dealt with property or rights located in Cuba was the expropriation of petitioner's Cuban property. This expropriation

[2] The only possible exception to this limitation is where there is a significant policy of our national government requiring that extra-territorial effect be accorded a foreign governmental act in a particular case. See *United States v. Belmont*, 301 U.S. 324; *United States v. Pink*, 315 U.S. 203. No similar federal policy exists in the present case.

could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba.

2. Further review is not warranted with respect to petitioner's other contention—that granting recovery to the respondent is contrary to Article VIII(2) (b) of the International Monetary Fund Articles of Agreement. In April of this year, Cuba withdrew from the International Monetary Fund. The provisions of Article VIII(2) (b) are for the benefit of member states and not for the benefit of private parties. Since Cuba is no longer a member of the Fund and since the date of proposed relief determines the applicability of Article VIII(2) (b), a decree granting recovery to the petitioner will not violate the provisions of the Agreement. See *Stephen v. Zivnostenska Banka, National Corporation*, 140 N.Y.S. 2d 323, 326.

In view of the United States, therefore, this case does not present any substantial question of federal law or policy.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

May 1964.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 16 1965
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner*,

v.

ALICIA VARAS, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

REPLY BRIEF FOR PETITIONER

JOHN G. LAYLIN
701 Union Trust Building
Washington, D. C. 20005

OWEN B. RHOADS
Three Penn Center Plaza
Philadelphia, Penn. 19102

Attorneys for Petitioner

COVINGTON & BURLING
GEORGE V. ALLEN, JR.
B. SCOTT CUSTER, JR.

DECHERT, PRICE & RHOADS
ARTHUR W. LEIBOLD, JR.

Of Counsel

September 16, 1965

TABLE OF CONTENTS

Page

I. The fact that there was no federal question involved in *Calvo* v. *Crown Life* is no indication that a federal question is not involved here 4

II. The cases awarding payment in dollars in the United States were on policies which expressly required payment of premiums and benefits outside of Cuba. The Cuban legal tender statutes did not apply to them .. 5

III. Respondent's contract and conflict of laws arguments (apart from their intrinsic invalidity) do not meet Petitioner's constitutional and international law points. Constitutional and international law requires that the jurisdiction whose laws are applied to govern a transaction have factual contacts with that transaction that are significant 6

IV. Contrary to Respondent's assertion, Petitioner's counsel did not seek to exclude testimony as to any possible contact with Pennsylvania. Respondent's cryptic suggestion of waiver is without foundation 8

V. Respondent's efforts to ridicule the international law and foreign relations factors discussed in the Petition and in the Note of the Government of Canada leave unscathed the pertinent consideration that these are matters of very substantial and immediate federal concern 9

Appendix 1a

CITATIONS

Cases:

Aetna Life Ins. Co. v. *Dunken*, 266 U.S. 389 6

Ajuria v. *Pan-American Life Ins. Co.*, 161 So. 2d 70 (La. 1964), *cert. denied*, 377 U.S. 997 5

Confederation Life Ass'n v. *Ugalde*, 164 So. 2d 1 (Fla. 1964), *cert. denied*, 379 U.S. 915 3

Crown Life Ins. Co. v. *Calvo*, 164 So. 2d 813 (Fla. 1964), *cert. denied*, 379 U.S. 915 ..... 3, 4

Maryland for the use of Levin v. *United States*, 381 U.S. 41 2

Norman v. *Baltimore & Ohio R.R. Co.*, 294 U.S. 240 7

Pan-American Life Ins. Co. v. *Botana*, 163 So. 2d 767 (Fla. 1964), *cert. denied*, 380 U.S. 943 5

Pan-American Life Ins. Co. v. *Lorido*, 154 So. 2d 200 (Fla. 1963), *cert. denied*, 377 U.S. 990 ..... 5, 6, 7

Page

Pan-American Life Ins. Co. v. *Raij*, 156 So. 2d 785 (Fla. 1963), *cert. denied*, 379 U.S. 920 5
Pan-American Life Ins. Co. v. *Recio*, 154 So. 2d 197 (Fla. 1963), *cert. denied*, 377 U.S. 990 5
Tramontana v. *S.A. Empresa de Viacao Aerea Rio Grandense*, No. 18,277, D.C. Cir., June 10, 1965, p. 18 3

Constitutional Provision:

U. S. Constitution, amend. XIV 4

Miscellaneous:

Restatement, *Conflict of Laws* (1934) 8
§ 346 8
§ 332 8
§ 347 8
§§ 355-359 8
§ 358, comment b 8

Restatement, *Contracts* §§ 59-60 (1932) 7

Restatement (Second), *Conflict of Laws* (Tent. Draft No. 6, 1960) 8
§ 332 8
§§ 346-346d 8

Restatement, *The Foreign Relations Law of the United States* § 19, comment d (Prop. Off. Draft 1962) 2

Supreme Court of the United States

OCTOBER TERM, 1965

No. 257

THE CROWN LIFE INSURANCE COMPANY, a Canadian corporation, *Petitioner,*

v.

ALICIA VARAS, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

REPLY BRIEF FOR PETITIONER

It is of crucial importance to the international insurance industry that the serious issues of constitutional and international law raised by this case be recognized and passed upon by this Court. If the courts of any state of the United States are permitted to alter the obligations of foreign insurance companies on their policies issued abroad to foreigners, merely because the insurance company is subject to suit in that state, and without any arguable overriding governmental interest on the part of the state in question, the resultant violation of constitutional and interna-

tional law would introduce serious uncertainties in an important industry particularly affected with a public interest and have a serious impact upon the foreign policy interests of the United States.* Some of the possible consequences of such court action are summarized in a Note of the Government of Canada filed in this Court through the courtesy of the Solicitor General and reproduced as an appendix to this brief.

Respondent's brief only repeats the contract and conflict of laws theories by which the Pennsylvania court sought to engraft Pennsylvania law on a Cuban contract without facing the constitutional and international law issues raised by the decision. Every significant factual contact in this transaction is with Cuba; none with Pennsylvania. The principles of constitutional and international law involved depend upon significant factual contacts. They cannot be evaded under the guise of applying a so-called state conflict of laws rule.** These principles of constitutional and international law are necessary and wholesome limita-

---

* The refugees from Castro's Cuba deserve not only our sympathy but material help. This has been and is being provided through appropriate federal, state and municipal agencies. It is not appropriate for the courts to torture the law to provide additional relief by awarding recovery on risks (such as currency depreciation) not insured against. To maintain a healthy insurance industry at the lowest possible cost to the policyholders the courts must resist the temptation to rewrite the law or the contract to fit individual hardship cases. *Cf.* Maryland for the use of Levin v. United States, 381 U.S. 41, 53.

** "[A] state cannot obtain control over conduct not within its jurisdiction to prescribe by the simple device of inventing a choice of law rule to be applied in the particular case for the purpose of giving effect to a rule of its own law designed to govern conduct." Restatement, *The Foreign Relations Law of the United States* § 19, comment d (Prop. Off. Draft 1962).

tions on the authority of a forum to substitute its own law for that governing a foreign transaction.

The Pennsylvania court was dealing with an alleged breach of a contract contained in a policy of life insurance entered into in Cuba in Spanish between Respondent, a citizen and resident of Cuba, and Petitioner, a Canadian corporation with an office in Cuba. Under the laws of Cuba Respondent is entitled to the cash surrender value of her policy in pesos in Cuba. Petitioner at all times has been ready, willing and able to perform the contract. Under Cuban law there has been no breach. See *Confederation Life Ass'n* v. *Ugalde,* 164 So.2d 1 (Fla. 1964), *cert. denied,* 379 U.S. 915; *Crown Life Ins. Co.* v. *Calvo,* 164 So.2d 813 (Fla. 1964), *cert. denied,* 379 U.S. 915.

Personal jurisdiction was obtained over Petitioner for no reason other than that it writes insurance in Pennsylvania. The Pennsylvania court has conjured up a new obligation to pay dollars in Pennsylvania notwithstanding the lack of any contact with Pennsylvania beyond the making of demand for payment through a Pennsylvania attorney and the bringing of suit in Pennsylvania.* Such contacts are patently in-

---

* As recently as the 10th of June of this year the United States Court of Appeals for the District of Columbia Circuit had before it for decision the question whether by bringing suit in the District of Columbia a Maryland resident's claim arising out of a Brazilian accident could be decided under the substantive law of the District of Columbia. The court stated:

> "... the only relationship of the District of Columbia to this claim is that it provides a forum with jurisdiction over the appellee. That is hardly a reason for the forum to prefer its own notions of policy to those embodied in the Brazilian law which created the claim appellant is asserting." Tramontana v. S.A. Empresa de Viacao Aerea Rio Grandense, No. 18,277, D.C. Cir., June 10, 1965, p. 18.

sufficient to satisfy the applicable constitutional and international law norms. In denying Petitioner a substantive defense under the law governing its contract the Pennsylvania court has deprived Petitioner of property in violation of the Fourteenth Amendment.

I. *The fact that there was no federal question involved in* Calvo v. Crown Life *is no indication that a federal question is not involved here.*

Respondent attaches importance to the fact that Petitioner was a party in *Crown Life* v. *Calvo, supra,* and in that case opposed certiorari on the ground that no federal question was there involved. The fact that no federal question was there involved is no indication that a federal question is not involved here, for there the Florida Supreme Court applied the Cuban law that governed the contract and here the Pennsylvania court has denied Petitioner its rights under Cuban law.

Respondent intimates that the policy in the *Calvo* case expressly required payment in Cuba. (Br. in Opp., p. 14.) This is not correct. The policy was silent as to the place of payment in the *Calvo* case, exactly as it is in this case. Under neither policy is payment required to be made outside of Cuba.

The Cuban legal tender statutes were amended after Respondent's policy was issued. The amended statutes withdrew for all contracts demandable (*"exigible"*) in Cuba the legal tender force of the dollar. Under the amended statutes Petitioner had to accept premium payments tendered in pesos,—at one peso to the dollar; and Respondent has to accept benefits in pesos at the same rate. Subsequent statutes forbid payment in any medium other than pesos.

The Pennsylvania courts in giving judgment for dollars in the United States on an obligation to pay

pesos, which Petitioner stands ready, willing and able to perform, are taking property without due process of law.

II. *The cases awarding payment in dollars in the United States were on policies which expressly required payment of premiums and benefits outside of Cuba. The Cuban legal tender statutes did not apply to them.*

Respondent seeks to associate this case with the *Lorido* and other cases involving policies of insurance that expressly required payment of premiums and benefits in one or another state of the United States.* (Br. in Opp., p. 17.) The argument overlooks the fact that the policies of the Lorido type were not demandable in Cuba. Respondent had the right under her policy, as Calvo had under his policy, to make payment of premiums and to demand payment of benefits in Cuba. Unlike the Lorido type of contract, the Calvo and Varas contracts came within the amended Cuban legal tender statutes.

Appended to Respondent's brief is a copy of the memorandum for the United States submitted by the Solicitor General in the *Lorido* case. Observing that the Solicitor General found no substantial question of federal law in the decision of the lower court in *Lorido*, Respondent suggests that there must be none in this case. (Br. in Opp., pp. 9, 15.)

---

* Pan-American Life Ins. Co. v. Lorido, 154 So.2d 200 (Fla. 1963), *cert. denied*, 377 U.S. 990; Pan-American Life Ins. Co. v. Recio, 154 So.2d 197 (Fla. 1963), *cert. denied*, 377 U.S. 990; Pan-American Life Ins. Co. v. Raij, 156 So.2d 785 (Fla. 1963), *cert. denied*, 379 U.S. 920; Pan-American Life Ins. Co. v. Botana, 163 So.2d 767 (Fla. 1964), *cert. denied*, 380 U.S. 943; Ajuria v. Pan-American Life Ins. Co., 161 So.2d 70 (La. 1964), *cert. denied*, 377 U.S. 997.

The issues of constitutional and international law now raised were not germane in *Lorido*. As the Solicitor General was at pains to point out, the Lorido policy was expressly payable in Louisiana. Not being demandable (*"exigible"*) in Cuba, the Cuban legal tender statutes were inapplicable. (See Br. in Opp., pp. 22-25.)

III. *Respondent's contract and conflict of laws arguments (apart from their intrinsic invalidity) do not meet Petitioner's constitutional and international law points. Constitutional and international law require that the jurisdiction whose laws are applied to govern a transaction have factual contacts with that transaction that are significant.*

Respondent has not pointed to any significant factual contacts of Respondent's contract with Pennsylvania. Instead, the application of Pennsylvania law is invoked by way of extensive discussion of novel (not to say erroneous) contract and conflict of laws theories. Notwithstanding the disregard of the constitutional and international law principles involved it may be useful to analyze these theories, extraneous as they are.

The basic theory of Respondent and of the court below seems to be that the cash surrender provision constituted, in legal contemplation, an option, *i.e.*, "a continuing, irrevocable offer," which was accepted by Respondent in Pennsylvania. The cash surrender provision of the policy is, of course, not an offer but is one of several alternative benefits available to Respondent under the single contract of insurance. The policy did not contemplate that the parties would enter into a second contract when the cash surrender alternative was chosen. No new consideration or new promises were required or involved. See *Aetna Life Ins. Co.* v.

Dunken, 266 U.S. 389, 399-400. However, even if Respondent is taken to have bargained for and obtained, in addition to insurance benefits, an option in some technical sense, which by her acceptance would ripen into a second contract for the cash surrender value, it is elementary that the terms of the offer contained in the option are defined by the option instrument itself. Respondent's "acceptance" may not enlarge the scope of the "offer." See Restatement, *Contracts* §§ 59-60 (1932). Thus, even if we accept the assumptions of Respondent's novel approach, we may not disregard the scope under governing law of the "offer"* which under the "second contract" theory was accepted.

Respondent's counsel apparently are not themselves persuaded by the option or "second contract" theory. They shift to talking about Pennsylvania, not as the place of contracting, but rather as the "place of performance." (Br. in Opp., pp. 11-14.) This latter approach to the conflicts problem is not only round about; it is circular. It assumes the very point in issue. It assumes that Petitioner's obligation is defined by the

---

* The offer so called was a provision in a contract which was wholly connected with Cuba, was obviously made with reference to Cuban law and was, under any proper conflicts approach, governed by the substantive law of Cuba. Even the choice of dollars as the medium of payment was related to Cuba, as the dollar then was legal tender in Cuba by force of the laws of Cuba. If the parties had desired to insulate the contract from alteration by operation of the laws of Cuba they could have stipulated, as the parties did in the *Lorido* line of cases, that premiums and benefits be paid only outside of Cuba. Being subject to Cuban laws the contract became a peso contract under changes in the Cuban legal tender legislation. This was accomplished by statutes comparable to our own Gold Clause legislation. See Norman v. Baltimore & Ohio R.R. Co., 294 U.S. 240. These laws effectively modified every contract on which demand could be made in Cuba.

law of whichever place Respondent chooses to demand performance.*

IV. *Contrary to Respondent's assertion, Petitioner's counsel did not seek to exclude testimony as to any possible contact with Pennsylvania. Respondent's cryptic suggestion of waiver is without foundation.*

Contrary to Respondent's assertion (Br. in Opp., pp. 4-5), Petitioner's counsel did not seek to exclude testimony by Respondent as to an alleged intention to reside in Pennsylvania or as to any possible contact with Pennsylvania. Respondent testified that she had

---

* The circularity of this line of reasoning is obscured by extensive quotation from the Restatement, *Conflict of Laws* (1934). The impression sought to be given is that the Pennsylvania court had done nothing more than apply usual and accepted conflicts rules.

The most cursory examination of the Restatement shows that counsel's approach is erroneous even on its own terms. It is, of course, established conflicts doctrine that issues as to the nature and extent of a party's obligation, including "when, where and by whom the performance is to be made and exactly what act of performance a party is obligated by the contract to do" are issues determined by the law of the *place of contracting*. Restatement, *Conflict of Laws* § 346 (1934); see *id.* §§ 332, 347. The principle of the Restatement sections quoted by Respondent (§§ 355-359) has to do only with the effect of local law upon the manner and details of performance at a place different from the place of contracting; but "the law of the place of performance . . . is not applicable to the point where the substantial obligation of the parties is materially altered." *Id.* § 358, *comment b;* see *id.* § 355.

The draft of the second Restatement has gone even further in pointing out that only details of performance are to be governed by the law of the place of performance. All substantial matters of validity and effect are to be governed by the law of the state with which the contract has its most significant relationships. Restatement(Second), *Conflict of Laws* §§ 332, 346-346d (Tent. Draft No. 6, 1960). The state with which the Varas contract has its most significant relationships is Cuba. By no stretch of the imagination could that state be Pennsylvania.

considered residing with a relative in Pennsylvania but had abandoned such intention. No objection was made by Petitioner, and no further testimony was offered by Respondent on this point. (R. 218.)

It was made clear to Respondent's counsel from the outset that Petitioner contended, and would contend throughout the proceedings, that Cuban law governs the contract. (*E.g.*, R. 221). Respondent's cryptic suggestion of waiver is utterly without foundation.

V. *Respondent's efforts to ridicule the international law and foreign relations factors discussed in the Petition and in the Note of the Government of Canada leave unscathed the pertinent consideration that these are matters of very substantial and immediate federal concern.*

The international cases cited in the Petition lose none of their pertinence because drawn from a wide variety of factual situations. They all support the proposition that municipal courts are prohibited by international law no less than by constitutional law from being capricious in their choice of the law governing a foreign transaction.

Respectfully submitted,

JOHN G. LAYLIN
OWEN B. RHOADS
Attorneys for Petitioner

COVINGTON & BURLING
DECHERT, PRICE & RHOADS
Of Counsel

September 16, 1965

APPENDIX

CANADIAN EMBASSY AMBASSADE DU CANADA

[SEAL]

Washington, D. C.
June 15, 1965

No. 196

Sir:

I have the honour, acting on instructions of and on behalf of the Government of Canada, to present the following observations of the Canadian government on the pending petition to the Supreme Court of the United States of Amercia, October term 1965, for a Writ of Certiorari to the Superior Court of Pennsylvania, the Crown Life Insurance Company, a Canadian corporation petitioner, versus Alicia Varas, respondent. I have the honour to request you to transmit this note to the Supreme Court of the United States for its consideration.

The Government of Canada wishes to express its grave concern regarding earlier rulings in this case in the Court of Common Pleas of Montgomery County, Pennsylvania, and the Superior Court of Pennsylvania; and in the Supreme Court of Pennsylvania (which dismissed a petition for leave to appeal, without opinion on March 22). The Government of Canada is anxious that the judgment of the Superior Court of Pennsylvania be reviewed on its merits by the Supreme Court of the United States. It is the hope of the Canadian government that the Supreme Court of the United States may take into account its views when the Court considers the petition in question.

The Honorable
Dean Rusk,
The Secretary of State
Washington, D. C.

In particular, without reviewing in detail the material set out in the statement of petition, the Government of Canada wishes respectfully to draw to the attention of the Supreme Court of the United States the following considerations.

Although this petition in itself might appear to involve only the matter of a single policy of insurance—the cash surrender value of which amounts to a mere four thousand dollars—it is the view of the Government of Canada that its implications are of a much greater and more serious magnitude.

The insurance contract in the suit was not made in the United States, nor was it to be performed in the United States. Neither of the parties are citizens or natives of the United States. The contract was made in Cuba by nationals of Cuba and Canada, to be performed in Cuba. The petitioner has proven itself as being ready, willing and able to pay to the respondent the cash surrender value of her policy in pesos in Cuba in accordance with Cuban law. The transaction had no contact whatsoever with the State of Pennsylvania or with the United States. The respondent Varas, a Cuban who presently resides in the State of Florida, was resident in the State of Georgia at the time of the suit. The petitioner has an agent in the State of Pennsylvania, as in many other states and countries.

If the decision of the Pennsylvania Superior Court in the Varas case is allowed to stand, it could have

serious economic consequences for the Canadian insurance industry as a whole. In the case of policies originally expressed in currencies other than that of the place of contract, it could result in an interference with contractual relationships between Canadian companies and nationals of foreign countries and it would open the door to other policyholders (who had purchased similar policies outside the United States and who do not reside there) to evade their own countries' foreign exchange regulations by demanding payment of the cash surrender value of their policies in Pennsylvania. The Canadian insurance companies could then be required to provide United States dollars in settlement, no matter what the stated currency of the policy. This could also bring companies into conflict with the laws of the countries where policies were issued. In the case of Cuba the penalty could be confiscation of the companies' assets there.

Altogether there are ten major Canadian life insurance companies which might be affected by this decision, all of which have written policies originally expressed either in sterling, United States dollars or other currencies, but now subject to foreign exchange control regulations. In all, these involve a total cash surrender liability of considerably in excess of one billion dollars. These liabilities are subject to domestic foreign exchange control regulations in the countries where policies were issued and such obligations, if settled in accordance with Pennsylvania law, as it would now appear to stand, could only be met by companies drawing either on their United States dollars reserves or by their using their Canadian dollar reserves and converting them to United States currency. In so doing they could be in violation of laws of original countries where policies were issued.

It is not the present intention of the Government of Canada to ask for leave to intervene in the case directly. However, because of the potential seriousness of the Varas decision, the Canadian government is most anxious that the case be reviewed on its merits by the Supreme Court of the United States.

I therefore hope that you may consider it feasible and appropriate to transmit this note to the Supreme Court of the United States of America in order that the Court may be able to take into account the views of the Government of Canada when it considers the pending petition.

Please accept, Sir, the renewed assurances of my highest consideration.

/s/ C. S. A. Ritchie

[SEAL]